United States Court of Appeals

for the Second Circuit

APPENDIX

75-4052

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES COURT OF APPEALS
FILED
JUL 22 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

TNT TARIFF AGENTS, INC. and NATIONAL CARLOADING CORPORATION,

Petitioners,

vs.

INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA,

Respondents.

On Petition for Review from Order of the Interstate Commerce Commission

JOINT APPENDIX

Volume I, pp. 1a – 344a

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DOCUMENT INDEX CERTIFIED BY INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
Washington, D.C. 20423

OF THE SECRETARY

I, ROBERT L. OSWALD, Secretary of the INTERSTATE COMMERCE SSION, do hereby certify that the attached document-index is representation and listing of all formal filings and Commission in the proceeding docketed in and identified as NO. 35921 -N (Allowance for Delivery of Shipments to Forwarder Facilities). Co ctio the documents listed on the attached index represent the ent for record in said proceeding, the originals of which are on fil d of rd in the Office of the Secretary of this Commission. The inal ds are available for review, upon request.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Commission this 25th day of April, A.D., 1975.

Robert L. Oswald

SECRETARY OF THE INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission

Washington, D.C. 20423

CE OF THE SECRETARY

I, ROBERT L. OSWALD, Secretary of the INTERSTATE COMMERCE OMMISSION, do hereby certify that the attached document-index is a ue representation and listing of all formal filings and Commission ances in the proceeding docketed in and identified as NO. 35921 vance for Delivery of Shipments to Forwarder Facilities.

ively, the documents listed on the attached index represent e re formal record in said proceeding, the originals of which on e and of record in the Office of the Secretary of this Co si . The original records are available for review, upon req t.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Commission this 25th day of April, A.D., 1975.

Robert L. Oswald

SECRETARY OF THE INTERSTATE COMMERCE COMMISSION

CASE ON APPEAL: TNT TARIFF AGENTS, INC., ET AL v. UNITED STATES OF AMERICA No. 75-4052 2nd Cir.

COMMISSION PROCEEDING: Docket No.: FORMAL NO. 35921 (Sub-No. 1)

Title: ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

Volume I

NO.	TITLE/SUBSTANCE OF DOCUMENT	DATE OF FILING/SERVICE	PARTY/COMMISSION
1.	ORDER: That this investigation be, and it is hereby broadened into and concerning the lawfulness of the rules, regulations and practices contained in the schedules designated herein; shall include all matters and issues with respect to the lawfulness of the said rules, regulations and practices under the IC Act; carriers parties to the said schedule be, and they are hereby made respondents.	12/14/73	SUSPENSION AND FOURTH SECTION BOARD
2.	ORDER: That this proceeding be handled under modified procedure; opening statements of facts & arguments on or before 20 days from the service date of this order; statement of facts and argument due 30 days after that date; and replies due 20 days thereafter; protestant shall timely advise respondent(s) and this Commission of the identity including addresses of the individuals composing the protestant(s) defense committee, if any.	12/17/73	COMMISSIONER HARDIN

SE-46 (2/75)

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FILE INDEXING CONTINUATION SHEET

NO.	TITLE/SUBSTANCE OF DOCUMENT	DATE OF FILING/SERVICE	PARTY/COMMISSION
3.	OPENING STATEMENT OF FACTS AND ARGUMENT	1/7/74	TNT TARIFF AGENTS, INC. (by F.H.Zentner
4.	STATEMENT OF FACTS AND ARGUMENT	2/4/74	ROCKY MOUNTAIN MOTOR TARIFF BUREAU, IN (by D. R. Devine)
5.	REPLY STATEMENT	2/25/74	RESPONDENTS(by F. H. Zentner)
6.	ORDER: proceeding referred to Albert E. Luttrell, Administrative Law Judge for hearing and for the initial decision.	DATED 4/5/74 (Not served)	COMMISSIONER BROWN
7.	INITIAL DECISION: The assailed item be cancelled and the proceeding discontinued	6/20/74	ALBERT E. LUTTRELL, Administrative Law Judge
8.	EXCEPTIONS	7/19/74	RESPONDENTS (by F. H. Zentner)
9.	REPLY TO EXCEPTIONS	8/2/74	ROCKY MOUNTAIN MOTOR TARIFF BUREAU, IN (by D. R. Devine)
10.	DECISION AND ORDER: Initial decision adopted as our own; made a deletion of a sentence and substitution of a paragraph; respondents required to cancel the schedules described on or before 35 days from the service date of this decision and order; that this proceeding be, and it is hereby discontinued.	12/5/74	REVIEW BOARD NUMBER 4 (Members FitzPar Shaw, and Fisher) 4a
11.	PETITION FOR RECONSIDERATION AND FOR FURTHER HEARING	1/6/75	RESPONDENTS (by F. H. Zentner)
12.	NOTICE: Order of 12/3/74 (served 12/5/74) stayed pending disposition of the petition filed 1/6/75	1/13/75	ROBERT L. OSWALD, Secretary

FILE INDEXING CONTINUATION SHEET

NO.	TITLE/SUBSTANCE OF DOCUMENT	DATE OF FILING/SERVICE	PARTY/COMMISSION
13.	REPLY TO PETITION FOR RECONSIDERATION AND FURTHER HEARING, AND MOTION TO STRIKE	1/20/75	ROCKY MOUNTAIN MOTOR TARIFF BUREAU, INC. (by D. R. Devine)
14.	REPLY TO MOTION TO STRIKE	2/10/75	RESPONDENTS (by F. H. Zentner)
15.	ORDER: Petition for reconsideration and for further hearing be, and it is hereby denied; order entered 12/3/74 (served 12/5/74) be, and it is hereby reinstated and modified so as to become effective 30 days from date of service hereof, with no other change in the requirements of said order.	3/14/75	DIVISION 2, ACTING AS AN APPELLATE DIVISION.
16.	LETTER NOTICE: advising that on 4/11/75, respondent will file a Petition for Review and Motion for Stay in the US Court of Appeals for the Second Circuit challenging the decision and order served 12/5/74	3/27/75	RESPONDENTS (by E. C. Winograd)
17.	ORDER: That the order of the Commission, Division 2, dated 3/6/75 (served 3/14/75) be, and it is hereby postponded pending further order of the Commission.	4/9/75	CHAIRMAN STAFFORD

SE-46a
(2/75)

CASE ON APPEAL: TNT TARIFF AGENTS, INC., ET AL v. UNITED STATES OF AMERICA No. 75-4052 D.C.C.

COMMISSION PROCEEDING: Docket No.: FORMAL NO. 35921

Title: ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

Volume I

NO.	TITLE/SUBSTANCE OF DOCUMENT	DATE OF FILING/SERVICE	PARTY/COMMISSION
1.	ORDER: That an investigation be, and it is hereby instituted upon the Commission's own motion; shall include all matters and issues with respect to the lawfulness of the said rules, regulations and practices under the IC Act; carriers parties to the said schedules be, and they are hereby, made respondents.	10/24/73	SUSPENSION AND FOURTH SECTION BOARD
2.	ORDER: Proceeding to be handled under modified procedure; opening statements due on or before 20 days from the service date of this order; statements of facts and argument due 30 days after that date; replies due 20 days thereafter.	10/24/73	COMMISSIONER HARDIN
3.	OPENING STATEMENT OF FACTS AND ARGUMENT	11/11/73	TNT TARIFF AGENTS, INC. (respondent) (by F. H. Zentner)
4.	LETTER PETITION: to waive rule 22 of the General Rules of Practice	11/27/73	RESPONDENT (by F. H. Zentner)
5.	STATEMENT OF FACTS AND ARGUMENT	12/12/73	THE EASTERN CENTRAL MOTOR CARRIERS ASSOCIATION, INC. (by J. I. Mayfield, Jr.)

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SE-46 (2/75)

FILE INDEXING CONTINUATION SHEET

NO.	TITLE/SUBSTANCE OF DOCUMENT	DATE OF FILING/SERVICE	PARTY/COMMISSION
6.	ORDER: That the petition for waiver of rule 22, filed by RESPONDENT be, and it is hereby, denied	12/20/73	DIVISION 2
7.	REPLY STATEMENT	1/2/74	RESPONDENT (by F. H. Zentner)
8.	ORDER: That this proceeding be referred to Morton B. Margulies, for hearing and for the initial decision.	Dated 2/19/74 (Not served)	COMMISSIONER BROWN
9.	INITIAL DECISION: Findings and order: that the assailed items be cancelled and the proceeding discontinued; that in the absence of a stay or postponement or the timely filing of exceptions, this order shall be effective 30 days from the date of service hereof.	3/22/74	MORTON B. MARGULIES, Administrative Law Judge
10.	EXCEPTIONS	4/22/74	RESPONDENT (by F. H. Zentner)
11.	REPLY TO RESPONDENTS' EXCEPTIONS	5/13/74	THE EASTERN CENTRAL MOTOR CARRIERS ASSOCIATION, INC.(by J.I.Mayfield,Jr.)
12.	DECISION AND ORDER: We find that the evidence does not warrant a result different from that reached by the Administrative Law Judge, and that his facts, conclusions, and findings are hereby adopted as our own	7/23/74	REVIEW BOARD NUMBER 4 (Members FitzPatrick, Shaw, and Fisher)
13.	LETTER REQUEST: for extension of time for filings petitions for reconsideration, rehearing, or reargument to 9/23/74	8/15/74	ABC FREIGHT FORWARDING CORPORATION (by H. Neil Garson)

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(2/75)

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FILE INDEXING CONTINUATION SHEET

NO.	TITLE/SUBSTANCE OF DOCUMENT	DATE OF FILING/SERVICE	PARTY/COMMISSION
14.	ORDER: Petition due date extended to 9/23/74; replies due on or before 10/14/74	Dated 8/20/74 Not served	COMMISSIONER BROWN
15.	ORDER: In addition to the extensions authorized next above, the date for compliance with the order served 7/23/74 be, and it is hereby postponed until 10/3/74	8/22/74	COMMISSIONER BROWN
16.	ORDER: Petition due date extended to 10/14/74; replies due on or before 11/4/74; the date for compliance with the order served 7/23/74 postponed until 10/24/74.	9/25/74	COMMISSIONER BROWN
17.	ORDER: Petitionsdue date extended to 10/21/74; replies due on or before 11/11/74; the date for compliance with the order of 7/23/74 be, and it is hereby postponed until 10/31/74.	10/11/74	COMMISSIONER HARDIN
18.	PETITION: for reconsideration and for further hearing	10/21/74	TNT TARIFF AGENTS, INC. (by H.N.Garson)
19.	NOTICE: Order of 7/12/74 (served 7/23/74) is stayed pending disposition of the petition next above.	10/30/74	ROBERT L. OSWALD, Secretary
20.	REPLY: TO petition filed 10/21/74 (filed in docket number I&S-8894), including motion to strike.	11/11/74	THE EASTERN CENTRAL MOTOR CARRIERS ASSOCIATION, INC. (J.I.Mayfield,Jr.)
21.	REPLY: to motion included in the reply filed 11/11/74	12/2/74	TNT TARIFF AGENTS, INC. (by H.N.Garson)

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FILE INDEXING CONTINUATION SHEET

NO.	TITLE/SUBSTANCE OF DOCUMENT	DATE OF FILING/SERVICE	PARTY/COMMISSION
22.	ORDER: Petition filed 10/21/74 denied; order of 7/12/74 reinstated and modified so as to become effective 30 days from date of service hereof, with no other change in the requirements of said order.	1/31/75	DIVISION 2, Acting as an Appellate Division.
23.	ORDER: that the order of the Commission served 1/31/75 shall be, and it is hereby, postponed pending further order of the Commission.	3/24/75	CHAIRMAN STAFFORD
24.	NOTICE: A court action was instituted on or about 3/20/75, under No. 75-4052, before the United States Court of Appeals for the Second Circuit	4/3/75	ROBERT L. OSWALD, Secretary

PETITION FOR REVIEW

BEFORE THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------x

TNT TARIFF AGENTS INC.,
ABC FREIGHT FORWARDING CORP.,
MIDLAND FORWARDING CORP., and
NATIONAL CARLOADING CORPORATION,

Petitioners,

-against-

UNITED STATES OF AMERICA,

Respondent.

----------x

PETITION FOR REVIEW

TNT TARIFF AGENTS INC., ABC FREIGHT FORWARDING CORP., MIDLAND FORWARDING CORP., and NATIONAL CARLOADING CORPORATION, hereby petitions the Court for review of the Orders of the Interstate Commerce Commission dated the 24th day of January, 1975 which reinstated and modified the Order of the 12th day of July, 1974, which said Order suspended, cancelled

and annulled petitioners tariffs #14, I.C.C.-F.F. #15 on page 31, item #619 and on page 108, item #80040.

The petitioners, TNT TARIFF AGENTS INC., ABC FREIGHT FORWARDING CORP., MIDLAND FORWARDING CORP., and NATIONAL CARLOADING CORPORATION reside and have their respective principle places of business in this Circuit.

ELLIOTT C. WINOGRAD
Attorney for Petitioners
OFFICE and POST OFFICE ADDRESS
201 ELEVENTH AVENUE
NEW YORK, NEW YORK 10001
212-924-2220

DATED: NEW YORK, NEW YORK
MARCH 20th, 1975

TO:

SECRETARY
INTERSTATE COMMERCE COMMISSION
INTERSTATE COMMERCE COMMISSION BUILDING
12th and CONSTITUTION AVENUE N.W.
WASHINGTON, D.C. 20423

FRITZ KAHN, GENERAL COUNSEL
INTERSTATE COMMERCE COMMISSION
INTERSTATE COMMERCE COMMISSION BUILDING
12th and CONSTITUTION AVENUE N.W.
WASHINGTON, D.C. 20423

THE EASTERN CENTRAL MOTOR CARRIERS
ASSOCIATION INC.
POST OFFICE BOX 3600
AKRON, OHIO 44310

LIFSCHULTZ FAST FREIGHT INC.
#28 NORTH FRANKLIN STREET
CHICAGO, ILLINOIS 60606

CERTIFICATE OF SERVICE

I, CAROLEN ROSS, do hereby certify that on the 20th day of MARCH, 1975, copies of Petition for Review were served by first class mail - prepaid air mail special delivery on the following parties:

SECRETARY
INTERSTATE COMMERCE COMMISSION
INTERSTATE COMMERCE COMMISSION BUILDING
12th and CONSTITUTION AVENUE N.W.
WASHINGTON, D.C. 20423

FRITZ KAHN, GENERAL COUNSEL
INTERSTATE COMMERCE COMMISSION
INTERSTATE COMMERCE COMMISSION BUILDING
12th and CONSTITUTION AVENUE N.W.
WASHINGTON, D.C. 20423

THE EASTERN CENTRAL MOTOR CARRIERS
ASSOCIATION INC.
POST OFFICE BOX 3600
AKRON, OHIO 44310

LIFSCHULTZ FAST FREIGHT INC.
#28 NORTH FRANKLIN STREET
CHICAGO, ILLINOIS 60606

Carolen Ross
CAROLEN ROSS

DATED: NEW YORK, NEW YORK
MARCH 20th, 1975

AMENDED PETITION FOR REVIEW

BEFORE THE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

TNT TARIFF AGENTS INC. and NATIONAL CARLOADING CORPORATION,	
Petitioners,	75-4052
-against-	
INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA,	
Respondents.	

AMENDED PETITION FOR REVIEW

1. The Tariff Agents Inc. and National Carloading Corporation hereby petitions the court for review of the Orders of the Interstate Commerce Commission dated the 24th day of January, 1975 which reinstated and modified the Order of the 12th day of July 1975, which said Order suspended, cancelled and annulled Petitioners Tariffs No. 14, I.C.C.-F.F. No. 15 on page 31, Item No. 619 and on page 108, Item No. 80040, and which Orders were stayed by the Interstate Commerce Commission by Order dated March 21, 1975 under Docket No. 35921, said Order is annexed hereto.

2. TNT Tariff Agents Inc. and National Carloading Corporation hereby petitions the court for review of the Orders of the Interstate Commerce Commission dated March 6, 1975 which reinstated and modified the Order of December 3, 1974 which said Order suspended, cancelled and annulled Petitioners Tariff No. 14, I.C.C.-F.F. No. 15, Item 52000, page 68 and which Orders were stayed by the Interstate Commerce Commission by Order dated April 9, 1975 under Docket No. 35921 (Sub. No. 1), said Order is annexed hereto.

3. That the title of the above action was changed to omit the Petitioners, ABC Freight Forwarding Corporation and Midland Forwarding Corporation due to the fact that the operating rights were sold to a third-party, and accordingly, your Affiant no longer represents ABC Freight Forwarding Corporation and Midland Forwarding Corporation in these preceedings. An Affidavit of Correction, (annexed hereto) was duly filed with this court on April 1, 1975.

4. That both matters under the Interstate Commerce Commission Docket No. 35921 and Docket No. 35921 (Sub. No. 1) involve identical issues of fact and law and Petitioners respectfully request the consolidation of same.

5. The Petitioners, TNT Tariff Agents, Inc. and National Carloading Corporation reside and have their principle places of business in this circuit.

ELLIOTT C. WINOGRAD
Attorney for Petitioners
OFFICE and POST OFFICE ADDRESS
201 ELEVENTH AVENUE
NEW YORK, NEW YORK 10001
212-924-2220

DATED: NEW YORK, NEW YORK
APRIL 21, 1975

TO:

SECRETARY
INTERSTATE COMMERCE COMMISSION
INTERSTATE COMMERCE COMMISSION BUILDING
12th and CONSTITUTION AVENUE N.W.
WASHINGTON, D.C. 20423

FRITZ KAHN, GENERAL COUNSEL
INTERSTATE COMMERCE COMMISSION
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12th and CONSTITUTION AVENUE N.W.
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THE EASTERN CENTRAL MOTOR CARRIERS ASSOCIATION INC.
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AKRON, OHIO 44310

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#28 NORTH FRANKLIN STREET
CHICAGO, ILLINOIS 60606

JOHN H. D. WIGGER, ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

THOMAS E. KARPER, ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

DON R. DIVINE
ROCKY MOUNTAIN TARIFF BUREAU, INC.
P.O. BOX 5746, TERMINAL ANNEX
DENVER, COLORADO 80217

H. G. ROESCHKE
FREIGHT FORWARDERS TARIFF BUREAU, INC.
140 CEDAR STREET
NEW YORK CITY 10006

CERTIFICATE OF SERVICE

I, CAROLEN ROSS, do hereby certify that on the 21st day of APRIL, 1975, copies of Petition for Review were served by first class mail - prepaid air mail on the following parties:

SECRETARY
INTERSTATE COMMERCE COMMISSION
INTERSTATE COMMERCE COMMISSION BUILDING
12th and CONSTITUTION AVENUE, N.W.
WASHINGTON, D.C. 20423

FRITZ KAHN, GENERAL COUNSEL
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THE EASTERN CENTRAL MOTOR CARRIERS ASSOCIATION, INC.
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DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

THOMAS E. KARPER, ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

DON R. DIVINE
ROCKY MOUNTAIN TARIFF BUREAU, INC.
P.O. BOX 5746, TERMINAL ANNEX
DENVER, COLORADO 80217

H. G. ROESCHKE
FREIGHT FORWARDERS TARIFF BUREAU, INC.
140 CEDAR STREET
NEW YORK CITY 10006

CAROLEN ROSS

DATED: NEW YORK, NEW YORK
APRIL 21st, 1975

EXHIBITS ANNEXED TO FOREGOING PETITION

SERVICE DATE
MARCH 24, 1975

ORDER

INTERSTATE COMMERCE COMMISSION

Docket No. 35921

ALLOWANCE FOR DELIVERY OF SHIPMENTS
TO FREIGHTFORWARDER FACILITIES

POSTPONEMENT OF EFFECTIVE DATE OF ORDER

PRESENT: GEORGE M. STAFFORD, Chairman, to whom the above matter, which is the subject of this order, is assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding, including the initial findings and decision of the Administrative Law Judge served March 24, 1974, that the evidence established that the schedules under investigation were shown to be unjust and unreasonable; the decision and order of Review Board No. 4 served July 23, 1974, which adopted the recommended findings of the Administrative Law Judge; the order of the Commission, Division 2, Acting as an Appellate Division, served January 31, 1975, which denied the petition for reconsideration of respondent, TNT Tariff Agents, Inc.; and of the filing of a Petition for Review and a Motion for Stay pendente lite of the Commission's order served January 31, 1975, by the respondent in TNT Tariff Agents, Inc. v. United States of America, et al. (Docket No. 75-4052, U.S. Court of Appeals, Second Circuit);

It appearing, That respondent has requested an order staying the effectiveness of the Commission's order served January 31, 1975, in the above-entitled Court proceeding, and that the Court has scheduled oral argument on the respondent's Motion for Stay for Tuesday, April 1, 1975;

It further appearing, That the effective date of the order should be postponed.

It is ordered, That the order of the Commission, Division 2, Acting as an Appellate Division, served January 31, 1975, shall be, and it is hereby, postponed pending further order of the Commission.

Dated at Washington, D. C., this 21st day of March, 1975.

By the Commission, Chairman Stafford.

ROBERT L. OSWALD
Secretary

(SEAL)

SERVICE DATE

APR 9 1975

ORDER

INTERSTATE COMMERCE COMMISSION

Docket No. 35921 (Sub-No.1)

ALLOWANCE FOR DELIVERY OF SHIPMENTS
TO FORWARDER FACILITIES

POSTPONEMENT OF EFFECTIVE DATE OF ORDER

PRESENT: GEORGE M. STAFFORD, Chairman, to whom the above matter, which is the subject of this order, is assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding;

It appearing, That by order dated March 6, 1975, the Commission, Division 2, Acting as an Appellate Division, reinstated and modified so as to become effective on April 14, 1975, the decision and order of Review Board No.4 dated December 3, 1974;

It further appearing, That by letter dated March 27, 1975, respondent has advised that on April 11, 1975, it will file a Petition for Review and Motion for Stay in the United States Court of Appeals for the Second Circuit challenging the above-mentioned decision and orders;

It further appearing, That the effective dates of the above-mentioned orders should be postponed.

It is ordered, That the order of the Commission, Division 2, Acting as an Appellate Division, dated March 6, 1975, shall be, and it is hereby, postponed pending further order of the Commission.

Dated at Washington, D.C., this 2nd day of April, 1975.

By the Commission, Chairman Stafford.

ROBERT L. OSWALD
Secretary

(SEAL)

EXHIBIT - AFFIDAVIT OF CORRECTION BY ELLIOTT C. WINOGRAD

BEFORE THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

----------X

TNT TARIFF AGENTS INC.,
ABC FREIGHT FORWARDING CORP.,
MIDLAND FORWARDING CORP., and
NATIONAL CARLOADING CORPORATION,

Petitioners,

-against-

INTERSTATE COMMERCE COMMISSION
and
UNITED STATES OF AMERICA,

Respondents.

Case No.
75-4052

AFFIDAVIT OF
CORRECTION

----------X

STATE OF NEW YORK COUNTY OF NEW YORK SS:

ELLIOTT C. WINOGRAD, being duly sworn deposes and says: that he is general counsel to the above named petitioners. That he submits this affidavit to advise this Court that the petitioners ABC FREIGHT FORWARDING CORP. and MIDLAND FORWARDING CORP. NO longer have any interest in these proceedings due to the fact that the operating rights were sold to a third party, and accordingly, your affiant no longer represents ABC and MIDLAND in these proceedings. Furthermore, this information came to affiant's attention and knowledge subsequent to the filing the Petition for Review and the Motion for Stay.

Wherefore, I respectfully request that this Court delete the names of ABC FREIGHT FORWARDERS CORP. and MIDLAND FORWARDING CORP. from the above captioned action.

SWORN TO BEFORE ME THIS
1st DAY OF APRIL, 1975
Stella Light

STELLA LIGHT
Notary Public, State of New York
No. 4528464
Qualified in Westchester County
Commission Expires March 30, 1976

ELLIOTT C. WINOGRAD

ORDER OF UNITED STATES COURT OF APPEALS DATED MAY 5, 1975 GRANTING LEAVE TO INTERVENE TO EASTERN CENTRAL MOTOR CARRIERS INC.

75-4052

B 37

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 5th day of May, one thousand nine hundred and seventy-five.

TNT Tariff Agents Incorporated and National Carloading Corporation,

Petitioners

v.

Interstate Commerce Commission and United States of America,

Respondents.

It is hereby ordered that the motion made herein by counsel for the

Eastern Central Motor Carriers Association, Incorporated

~~appellant~~ ~~appellee~~ petitioner ~~respondent~~

by notice of motion dated April 21, 1975 for leave to intervene

be and it hereby is granted ~~denied~~

It is further ordered that

ELLSWORTH VAN GRAFEILAND

Circuit Judges

ORDER OF UNITED STATES COURT OF APPEALS DATED MAY 20, 1975 GRANTING LEAVE TO INTERVENE TO ROCKY MOUNTAIN TARIFF BUREAU

75-4052

B 24

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 20th day of May, one thousand nine hundred and seventy-five.

TNT Tariff Agents Incorporated and National Carloading Corporation,

Petitioners,

v.

Interstate Commerce Commission and United States of America,

Respondents

Eastern Central Motor Carriers Association, Incorporated,

Intervenor.

It is hereby ordered that the motion made herein by counsel for the

Rocky Mountain Tariff Bureau - intervenor

~~appellant~~ ~~appellee~~ ~~petitioner~~ ~~respondent~~

by notice of motion dated May 15, 1975 for leave to intervene

be and it hereby is granted ~~denied~~

It is further ordered that

MURRAY I. GURFEIN

Circuit Judges

STIPULATION

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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TNT TARIFF AGENTS, INC. and
NATIONAL CARLOADING CORPORATION,

Petitioners,

-against-

INTERSTATE COMMERCE COMMISSION and
UNITED STATES OF AMERICA,

Respondents.

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STIPULATION

Case No. 75-4052

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties and their attorneys that the time for Petitioners to serve and file their brief in the above entitled matter is hereby extended to and including JULY 21ST ~~August 6th~~, 1975.

IT IS FURTHER STIPULATED AND AGREED that the time for Respondents and Intervenors to serve and file its opposing briefs is hereby extended to and including AUGUST 20TH ~~September 8th~~, 1975, and thusly, the Petitioners time to serve and file its Reply is hereby extended to and including September 2ND ~~12th~~, 1975.

DATED: NEW YORK, NEW YORK
MAY 15th, 1975

Attorney for Petitioners

Attorney for Respondents

Attorneys for Intervenors

PARTS OF RECORD OF CASE NO. 35921

ORDER OF INTERSTATE COMMERCE COMMISSION
DATED OCTOBER 19, 1973

SERVICE DATE

ORDER

OCTOBER 24 73

At a Session of the INTERSTATE COMMERCE COMMISSION, Suspension and Fourth Section Board, held at its office in Washington, D. C., on the 19th day of October, 1973.

No. 35921

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

There being under consideration the matter of rules, regulations and practices affecting rates and charges, applicable on interstate or foreign commerce of shipments delivered to freight forwarders' facilities and accorded an allowance in lieu of pick-up service by the carriers, as set forth in the following:

TNT TARIFF AGENTS, INC., AGENT,
TARIFF NO. 14, I.C.C.-F.F. NO. 15:
On page 31, ITEM NO. 619,
On page 108, ITEM 80040;

or as same may be amended or reissued:

It appearing, That upon consideration of the said schedules, and the record in Suspension Board Case No. 59894 which resulted in suspension for investigation of related schedules in Investigation and Suspension Docket No. 8894 there is reason to institute an investigation to determine whether the said schedules result in rates and charges, rules or regulations and practices that are unjust and unreasonable in violation of the Interstate Commerce Act; and good cause appearing therefor:

It is ordered, That an investigation be, and it is hereby, instituted upon the Commission's own motion, into and concerning the lawfulness of the rules, regulations and practices contained in said schedules with a view to making such findings and orders in the premise as the facts and circumstances shall warrant.

It is further ordered, That the investigation in this proceeding shall not be confined to matters and issues hereinbefore stated as the reason for instituting this investigation, but shall include all matters and issues with respect to the lawfulness of the said rules, regulations and practices under the Interstate Commerce Act.

And it is further ordered, That the carriers parties to the said schedules be, and they are hereby, made respondents to this proceeding; that copies of this order be served upon the said respondents; and that notice of this proceeding be given the public by posting a copy of this order in the Office of the Secretary of the Commission.

By the Commission, Suspension and Fourth Section Board.

ROBERT L. OSWALD
Secretary

(SEAL)

ORDER OF INTERSTATE COMMERCE COMMISSION
DATED OCTOBER 23, 1973

(2)

SERVICE DATE
OCTOBER 24, 1973

ORDER

INTERSTATE COMMERCE COMMISSION

No. 35921

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

IN THE MATTER OF DIRECTING MODIFIED PROCEDURE IN THIS PROCEEDING

PRESENT: Dale W. Hardin, Commissioner, to whom the matter which is the subject of this order has been assigned for action thereon.

It is ordered, That this proceeding be handled under modified procedure; the filing and service of pleadings to be as follows: (a) opening statement of facts and argument by respondent(s) and any parties supporting respondent(s) on or before 20 days from the service date of this order; (b) 30 days after that date, statement of facts and argument by protestant(s) and any supporting parties; and (c) reply by respondent(s) and any supporting parties 20 days thereafter.

And it is further ordered, That protestant(s) shall timely advise respondent(s) and this Commission of the identity, including addresses, of the individuals composing the protestant's(s') defense committee, if any, together with an indication of the number of copies of respondent's(s') statement which are desired, and to whom the copies are to be sent.

Dated at Washington, D. C., this 23rd day of October, 1973.

By the Commission, Commissioner Hardin.

(SEAL)

ROBERT L. OSWALD
Secretary

REPRESENTATIVES OF THE PARTIES

F. H. Zentner (Respondent)
TNT Tariff Agents, Inc., Agent,
201 - 11th Ave.
New York, NY 10001

John I. Mayfield, Jr. (Interested Party)
Eastern Central Motor Carriers Ass'n.
P. O. Box 3600
Akron, OH 44310

H. L. Rosenthal (Interested Party)
Lifschultz Fast Freight, Inc.
28 N. Franklin St.
Chicago, IL 60606

OPENING STATEMENT BY TNT FREIGHT FORWARDERS OF
OF FACTS AND ARGUMENT DATED NOVEMBER 9, 1973

30a

Before The

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 35921

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

RESPONDENT'S OPENING STATEMENT

OF FACTS AND ARGUMENT

Dated: November 9, 1973

Due: Novemver 13, 1973

F. H. Zentner
Vice President
TNT Tariff Agents, Inc., Agent
201 Eleventh Avenue
New York, N.Y. 10001

Comes now TNT Tariff Agents, Inc., respondent in the above-styled proceeding, and files this its opening statement of facts and argument and respectfully says:

STATEMENT OF THE CASE

By publication which became effective September 10, 1973, respondent, in its I.C.C.-F.F. No. 15, published Items 619 and 80040 for account of the participants in its tariff. These items provide delivered in or "dock" scales of rates by means of a conversion table on movements where only picked up scales of rates are published. Such "dock" rates are $1.00 per cwt. lower than the picked up scales of rates.

Upon its own motion, the Commission's Board of Suspension instituted an investigation into the lawfulness of the instant tariff matter after the Eastern Central Motor Carriers Association, Inc. filed a protest against similar matter published by Lifschultz Fast Freight, Inc. which resulted in I&S Docket No. 8894, Allowance For Shipments Delivered To Forwarder.

By order dated October 23, 1973, the instant proceeding was assigned for handling under modified procedure with respondent's opening statement of facts and argument due November 13, 1973. Respondent herewith submits its statement of facts and argument.

STATEMENT OF F. H. ZENTNER

My name is F. H. Zentner. I am Vice President of TNT Tariff Agents, Inc., and am also Vice President - Traffic of ABC Freight Forwarding Corporation, Midland Forwarding Corporation and National Carloading Corporation. These three freight forwarders are participants in TNT Tariff Agents, Inc. Tariff I.C.C.-F.F. No. 15. I have had twenty two years experience in the field of traffic and transportation. My duties include, on a regular basis, the analysis of traffic movements, profitability studies and rate comparisons and studies.

Initially, it is our opinion that the caption "ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDERS FACILITIES" assigned to this proceeding is misleading and tends to cloud the basic issue here involved.

Allowances in lieu of pick up performed have been maintained by freight forwarders as well as motor carriers over the years. Allowances so published require, in addition to detailed record keeping, that the shipper submit a periodic statement for the amount of the allowance so published. Furthermore, such allowances are only paid to shippers located within a terminal area or commercial zone.

The dock rates published by respondent in the instant proceeding have no relationship whatsoever to allowances specifically detailed above. Additionally, unlike allowances, they result in lower freight charges to whoever pays the freight - not exclusively the shipper.

As cited in Exhibit No. 1, the publication of rates applicable from the terminals or receiving stations (dock rates) of the forwarders participating in respondent's tariff is a well established method of publishing rates. Exhibit No. 1 clearly indicates that a varying dollar difference exists between rates published on various commodities which include the service of pickup and those rates that do not include a pick up service. Specific reference is made to the Freight All Kinds level of rates shown on Exhibit No. 1 as published in Item 506 of Freight Forwarders Tariff Bureau Tariff 55-G, I.C.C.-F.F. No. 222. The dock rate charge of $1225.48 effective from Newark to San Francisco, which does not include the service of pickup, likewise applies only to the freight forwarder's facility in San Francisco and does not include the service of delivery. The normal level of rates which include pickup and delivery using Class 45 as an example, is $1632.00. The difference, therefore, between the pickup and delivered rate is $406.52. Inasmuch as pickup and delivery charges on volume traffic are comparable to each other, it is, therefore, apparent that the shipping public is not only saving $203.26 on the pick up but, a like amount on delivery. Using 24,000 lbs. as a basis, the saving equates to 85¢ per cwt. for pickup and 85¢ per cwt. for delivery. In addition to this level of Freight All Kinds rates, all rates shown in this tariff were under investigation in Docket 35357 which

was prompted by protest filed by the Rocky Mountain Motor Tariff Bureau. A full and complete investigation was made and after consideration of the facts, the Interstate Commerce Commission rendered a decision stating that rates and charges named therein were just and reasonable and were allowed to remain in effect. During this investigation the Rocky Mountain Motor Tariff Bureau, Inc., alleged that these rates would establish a tremendous competitive force and a diversion of traffic, however, to respondent's knowledge, the carriers party to the Rocky Mountain Motor Tariff Bureau have elected not to meet this alleged competition.

Reference is also made to Exhibit No. 1 which depicts a level of rates applying from New York, New York to Los Angeles, California, on a list of commodities referred to as retail merchandise. Considering cotton clothing as an example, which moves in substantial quantities under this rate level, it can be seen that on shipments delivered by shippers in less than truckload quantities of 171 pounds, the rate, not including pickup, is 10.31 per hundred weight, whereas the rate on less than truckload movements of cotton clothing which include pick up, is 17.78, a difference of 7.47 per hundred weight. The need for this type of rate structure was to meet the competition of unregulated pool car distributors and was in no way designed to attract or accomplish diversion from competing regulated modes of transportation.

It should be further noted that TNT Tariff Agents, Inc., Tariff No. 3, I.C.C.-F.F. No. 4, in which respondent freight forwarders participate, names a separate scale of class rates that do not include a pick up (dock rate).

Referring to Exhibit No. 2 appended hereto, it can be seen that this dock rate structure of class rates which has been effective for years, reduces the rate on less than 500 lbs. between New York and Chicago by 1.02 cwt. on Class 100 traffic which includes pickup. A similar relationship exists on rates published for weights of 500 lbs. and 1,000 lbs.

The cost to respondent freight forwarders for providing pickup service, not only within the terminal area but, outside of same, is skyrocketing as clearly evidenced in Advance Statements of Justification submitted to the Commission in connection with recent general increases sought. This spiraling cost has in most cases exceeded the amount that Freight Forwarders have been able to recoup through general increases, and therefore, it is apparent that this method of publishing rates is vital to our survival and likewise, other innovations must be considered. The instant publication here under investigation has the effect of stabilizing the forwarders' cost of doing business on this segment of our through transportation.

Most freight forwarders, including respondent freight forwarders, provide pickup service within terminal areas through affiliated companies. The normal operation for such pickups is to combine same with deliveries. The local pickup and delivery vehicles are loaded during non-business hours throughout the night and dispatched to effect such deliveries the following morning, the start of the business day. When these deliveries are completed, the pickup operation commences and the vehicles generally return to the forwarder's facility with the freight picked up, at the close of the business day. When pick up is performed by the forwarder in this manner, the freight must be physically checked at the shipper's platform with the driver helping and supervising the loading thereof. This freight must be checked once again upon return to the forwarder's facility prior to being loaded into an outbound linehaul vehicle.

Through application of the rates here involved, when freight is delivered by shipper to the forwarder's facility, only one physical check of the freight is necessary prior to loading into the linehaul vehicle. Secondly, shippers are in a position to secure a possible 24 hour better service, as freight delivered within the normal working hours can be directly loaded for release the same day. The operation of a local pickup service by the forwarder, inasmuch as the pickup trucks arrive after the closing of the business day, usually results in delays in releasing this freight until the following day.

Section 409, Part IV of the I. C. Act, permits freight forwarders to negotiate with motor carriers a rate for performing pickup service outside of the delivery area, less than published tariff rates. It is becoming more and more difficult to maintain a level of pickup cost under Section 409 as many carriers do not wish to provide the service for less than their published tariff rates. As a common carrier, freight forwarders must assess through rates from origin to final destination and without control of our pickup cost and the payment of published tariff rates to provide the service, respondent freight forwarders find that many movements can not return out of pocket expenses. This situation is certainly not unique with the respondent freight forwarders as same is an industry problem.

To further point out that this method of publishing rates is not new, reference is made to respondent ABC Freight Forwarding Corporation, Tariff 9-E, I.C.C.-F.F. 77, Item 619A therein, which has had in effect since July 31, 1972, a period in excess of one year, the same identical provisions here involved. Similar provisions were published by Midland Forwarding Corporation in Item 619-A, Supplement 122 to its I.C.C.-F.F. No. 35, also effective July 31, 1972. Both ABC Freight Forwarding Corporation and Midland Forwarding Corporation operate solely within the territory embraced by motor carriers parties to the Eastern Central Motor Carrier Association and it is difficult for respondents to conceive that no

reference was made in the protest to the Commission concerning this publication. It would appear that the effectiveness of these provisions has in no way affected the traffic flow of the motor carriers as no reference to lost business was furnished, and it is likewise common knowledge within the transportation industry, as well as the Commission, that revenues and profits of the motor carrier industry have increased substantially during this period of time that such dock rates have been in effect. It is, therefore, apparent that dock rates of respondent freight forwarders have in no way caused hardship nor adversely affected motor carriers' profit making capability and it is our belief that a hollow cry for investigation was made merely to stifle competition.

It is likewise evident by the attached photocopies of letters supporting this publication, which are identified by our Exhibit No. 3, that the shipping public's interest would be best served by allowing these provisions to remain in effect. This is certainly in harmony with the National Transportation Policy.

Although the Eastern Central Motor Carriers Association's protest included only that territory in which its member carriers operated, it should be noted that the provisions here at issue apply throughout the entire United States at each and every terminal of the respondent freight forwarders. Respondents have not received any formal opposition to these tariff provisions from any other motor carrier or motor carrier bureau, or any other competing mode of transportation.

This concludes my testimony and I will be available for cross-examination if requested.

F. H. Zentner

VERIFICATION

State of New York)
New York County) SS:

F. H. Zentner, being duly sworn, deposes and says that he has prepared the foregoing statement and knows the contents thereof and that the same are true as stated.

F. H. Zentner

Subscribed in my presence and sworn to before me the ninth day of November, 1973.

ARGUMENT

The matter here under investigation has been shown, by the figures submitted, not to be an innovation in rate making, dock rates applying from freight forwarders' receiving terminals having been in effect for many, many years.

There is actually no comparison between dock rates here involved and allowances payable to shippers in lieu of pickup performed by a carrier. It is an established principle determined through numerous cases before the Commission that an allowance in lieu of a pick up can only be for the account of a shipper and only those shippers physically located within a commercial zone or terminal area. The dock rate structure here involved established a definite level of rates from respondent freight forwarders' receiving stations and, as such, is made available not only to shippers within a terminal area but, also to those located outside such area and also for the account of consignees. The cry by protesting motor carriers for investigation and possible cancellation of this level of rates is certainly hollow, based on any argument furnished in the initial protest. Respondents have not been made aware throughout all the years that this type of publication has been effective that same has affected traffic via motor carriers. It would seem reasonable that if this method of publication established a competitive force of any value, managerial discretion of the motor carriers would have met this competition.

To prove the point that dock rates are a long established method of rate publication, further reference is made to Exhibit No. 2 which points up differences in excess of $1.00 in the dock rate versus the rate including pickup on shipments of less than 500 pounds.

It is common knowledge that the freight forwarding industry has suffered extreme setbacks financially due to the sweeping loss of traffic to unregulated forms of transportation. If respondents are to survive as well as the freight forwarding industry generally, it must be allowed to provide a level of charges to the shipping public that will allow continued use of freigt forwarder service. A decision by the Commission to find the rates here involved unjust and unreasonable would tend to artificially allocate business to its competitors, whether they be regulated or unregulated. This is certainly contrary to the basic tenets of the National Transportation Policy.

The soundness of this method of rate publication here involved is certainly evident by the support received from the shipping public who are taking advantage of this structure today. Exhibit No. 3 would indicate that the cancellation of these provisions would likewise force various shippers out of retail markets around the country. Here again, this would be contrary to the National Transportation Policy.

In depicting the normal origin terminal operations of a freight forwarder, it is evident that less handling and attendant cost is experience by respondents on traffic delivered to its receiving facility, and shippers likewise secure a generally expedited service inasmuch as freight delivered by the shipper has the availability of same day release to destinations throughout the country.

WHEREFORE, in view of all the foregoing facts and argument, respondents should be allowed to maintain the level of rates here under investigation without interruption and the Commission is respectfully urged to discontinue the instant proceeding.

Respectfully submitted,

TNT TARIFF AGENTS, INC.

F. H. Zentner
Vice President
201 Eleventh Avenue
New York, N. Y. 10001

Dated: November 9, 1973.

Due: November 13, 1973.

FHZ/cj

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing first class, postage prepaid, a copy thereof properly addressed to each such party.

Dated at New York, N.Y., this ninth day of November, 1973.

F. H. Zentner

EXHIBIT No. 1
DOCKET No. 35921

ITY	FROM	TO	DOCK RATES	RATES INCLUDING PICK-UP	TARIFF AUTHORITY
es, glass etal, ated and ted.	New York, N.Y.	Dallas, Tex.	11.82 - LTL 11.16 - 500 lbs. 9.73 - 1000 lbs. 9.01 - 2000 lbs. 8.08 - 5000 lbs. (1)	12.57 - LTL 12.03 - 500 lbs. 10.39 - 1000 lbs. 9.60 - 2000 lbs. 8.61 - 5000 lbs. (2)	(1) Item 1100-FF18-F I.C.C.-FF-207 (2) I-28660 NMFC A-13 FF59,ICC-FF 190, Sec.9.
ghts ight es) metal, ed.	Boston, Mass.	Dallas,Tex.	28.30 - LTL 27.12 - 500 lbs. 23.32 - 1000 lbs. 21.55 - 2000 lbs. 19.25 - 5000 lbs. (3)	28.91 - LTL 27.72 - 500 lbs. 23.86 - 1000 lbs. 22.08 - 2000 lbs. 19.77 - 5000 lbs. (4)	(3) ICC FF 207 Item 2620 - FF-18-F (4) I-37180, MMFCA-13 and FF59,Sec.9 ICC FF No.190
or Pails, lated and l jacketed	St.Louis, Mo.	Dallas,Tex.	4.74 - 4.65 -1500 lbs. 3.87 -5000 lbs. (5)	6.13 - 6.04 - 1500 lbs. 5.01 - 5000 lbs. (6)	(5) ICC FF 207 Item 1500, FF18-F (6) Item 910, 915, FF18-F ICC-FF-207
Mdse. ing, n)	New York, N.Y.	Los Angeles, Cal.	10.31 - 171 10.14 - 3000 lbs. 9.95 - 5000 lbs. (9)	17.78 - LTL 14.09 - 500 lbs. 12.68 - 1000 lbs. 11.74 - 5000 lbs. (10)	(9) TNT 2-A ICC-FF 3, Item 1000 (10) Item 9650-FF6-C ICC FF215

EXHIBIT 1
DOCKET No. 35921

COMMODITY	FROM	TO	DOCK RATES	RATES INCLUDING PICK-UP	TARIFF AUTHORITY
Dry Goods (Retail Mdse.)	New York, N.Y.	Laredo, Texas	9.19 - 350 lbs.(11)	15.68 - LTL 15.02 - 500 lbs. (12)	(11) TNT 2-A ICC -FF-3,Item 1100 (12) FF59,Sec. 10 ICC FF No. 190
Notions (Retail Mdse.)	New York, N.Y.	Detroit, Mich.	6.16 - 119 lbs. 5.40 -1000 lbs. 5.[illegible] -2000 lbs. (13)	8.52 - LTL 8.15 - 500 lbs. 7.05 -1000 lbs. 6.49 -2000 lbs. (14)	(13) TNT 2-A ICC FF-3 Item 1205 (14) TNT 3 ICC FF-4
Plastic Articles, NOI 15 lbs. per cu.foot,	New York, N.Y.	Los Angeles, Cal.	11.47 - 500 lbs. 10.33 - 1000 lbs. 9.57 - 5000 lbs. (15)	12.47 - LTL 11.22 - 1000 lbs. 10.37 - 5000 lbs. (16)	(15) ICC FF No. 215 Item 7145 - FF 6-C (16) Class 70, Item 156600 NMFC A-13 and FF 2-C ICC FF No. 180
Cleaning Compounds, liquid	New York, New York,	Los Angeles, Cal.	7.80 - 500 lbs. 7.43 - 1000 lbs. 6.55 - 5000 lbs. (17)	9.80 LTL 8.82 - 1000 lbs. 8.16 - 5000 lbs. (18)	(17) Item 3023 FF6-C ICC FF 215 (18) Class 55.Item 48580, NMFC A-13 FF 2-C ICC FF No. 180
Chinaware, Earthenware, Classware, n/ex 35¢ per lb.	New York, N.Y.	Los Angeles, Cal.	8.05 - 500 lbs. 7.29 - 1000 lbs. 6.74 - 500 lbs. (19)	10.63 - 500 lbs. 9.55 - 1000 lbs. 8.85 - 5000 lbs. (20)	(19) ICC FF No. 215 Item 3000,FF 6-C (20) FF57, ICC,FF 188, CG 270
FAK	Newark, N.J.	San Francisco, Cal.	1225.48 (21) (30,000 lbs. or less)	1632.00 (Class 45 articles at 24,000 lbs. min.)	(21) Item 506 FF 55-G ICC-FF 222

EXHIBIT 1
DOCKET No. 35921

COMMODITY	FROM	TO	DOCK RATES	RATES INCLUDING PICK-UP	TARIFF AUTHORITY
Boots & Shoes NOI	North Haven, Conn.	New Orleans, La.	7.79 - LTL 7.33 - 500 lbs. 6.64 - 1000 lbs. 6.43 - 2000 lbs. 5.36 - 5000 lbs.	8.88 - LTL 8.42 - 500 lbs. 7.71 - 1000 lbs. 7.50 - 2000 lbs. 6.42 - 5000 lbs.	Item 4309 - Midland 9-C ICC-FF-50
	Baltimore, Md.		6.71 - LTL 6.24 - 500 lbs. 5.69 - 1000 lbs. 5.49 - 2000 lbs. 4.56 - 5000 lbs.	7.80 - LTL 7.33 - 500 lbs. 6.76 - 1000 lbs. 6.56 - 2000 lbs. 5.62 - 5000 lbs.	
	New York, N.Y.		7.58 - LTL 7.10 - 500 lbs. 6.46 - 1000 lbs. 6.24 - 2000 lbs. 5.22 - 5000 lbs.	8.67 - LTL 8.20 - 500 lbs. 7.53 - 1000 lbs. 7.31 - 2000 lbs. 6.28 - 5000 lbs.	
Pads or Padding, hair, wool, synthetic plastic, fibre, etc.	Boston, Mass.	Chicago, Ill.	14.62 - LTL 14.01 - 500 lbs. 11.81 - 1000 lbs. 10.42 - 2000 lbs. 9.28 - 5000 lbs. (7)	28.89 A.Q. (8)	(7) Item 5400-Mid 9-C ICC FF 50 (8) I - 149190, NMFC A-13 TNT 3, ICC-FF- 4
		Kenosha, Wisc.	14.62 - LTL 14.01 - 500 lbs. 11.81 - 1000 lbs. 10.42 - 2000 lbs. 9.28 - 5000 lbs. (7)	31.82 - A.Q (8)	

EXPLANATION OF ABBREVIATIONS

FF	Freight Forwarders Tariff Bureau, Inc.
FAK	Freight All Kinds
I	Item
LTL	Less than truck load
lb	Pound
lbs	Pounds
MDSE	Merchandise
Min	Minimum
NMFC	National Motor Freight Classification
NOI	Not otherwise indexed
SEC	Section
TNT	TNT Tariff Agents, Inc.

CLASS RATES: Ne

WEIGHT BREAKS	1(
	(1)
L/T 500 lbs.	1021*
500 lbs.	910
1000 lbs.	781
2000 lbs.	725
5000 lbs.	614

(1) Rates on

(2) Rates on
On shipme
$1.00 les

* - Rates for
TNT Tarif

EXHIBIT No. 2
DOCKET No. 35921

w York City, N. Y. to Chicago, Ill. (TNT Tariff Agents,Inc. Tariff No. 3, I.C.C.-F.F. No. 4)

CLASSES

00		92-1/2		85		77-1/2		70	
	(2)	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)
	919	958*	850	887*	779	819*	714	753*	648
	880	847	813	780	747	713	685	650	623
	759	731	701	671	645	615	591	560	532
	701	673	648	619	596	568	546	522	495
	591	566	546	514	496	474	451	429	408

shipments when forwarder provides pick-up service.

shipments delivered directly to forwarder's terminal on which no pick-up service has been provided.
nts of 500 lbs. or more these rates are superseded by the provisions here at issue. They would be
s than the rates which include pick-up.

shipments under 500 lbs. include 75 cents per cwt. pick-up charge within New York City (Item 621 series,
f Agents, Inc. Tariff No. 14, I.C.C. - F.F. No. 15).

EXHIBIT No. 3
DOCKET No. 35921

BEFORE THE

INTERSTATE COMMERCE COMMISSION

STATEMENT OF SUPPORT

SUBJECT: I.C.C. ORDER NO. 35921 - OCTOBER 24, 1973
ALLOWANCE FOR DELIVERY OF SHIPMENTS
TO FORWARDER FACILITIES

TO: ROBERT L. OSWALD, SECRETARY

Gentlemen:

Comes now the F. W. Woolworth Co., Northeastern Regional Office, located at 233 Broadway, New York, NY 10007, hereinafter called Woolworth, which maintains 265 retail variety and general merchandise chain stores in the New England and metropolitan New York area, with a statement in support of respondent, TNT.

STATEMENT OF SUPPORT

Woolworth has, since May, 1973, specified the use of TNT's "Dock Rate" service from the vendors whose terms of sale are "F.O.B. Cincinnati, Ohio, Milwaukee, Wisconsin, Minneapolis, Minnesota or St. Paul Minnesota." Briefly, Woolworth's shipping instructions to these vendors specify that all consolidated shipments consigned to F. W. Woolworth Co. in Boston, Mass., Glendale, NY, Jersey City, NJ or Newark, NJ are to be delivered to Abco Terminal Company at a specified address in the city of origin. Woolworth has, since the issuance of the above instructions, enjoyed the benefits of TNT's service from the origins named to the Woolworth consolidator destinations named and has found such service, and covering rates, to be beneficial and economical. In addition, Woolworth plans to expand its use of TNT's "Dock Rate" service to additional origin cities in the near future, on the basis of its satisfaction with the rates and service currently effective for the four (4) origin cities named above.

Respectfully submitted,

J. F. NEUBAUER
REGISTERED PRACTITIONER
REGIONAL TRAFFIC MANAGER

DATED AT NEW YORK, NEW YORK
NOVEMBER 8TH, 1973

47a

EXHIBIT No. 3
DOCKET No. 35921

DRESSER

HAND TOOL DIVISION

DRESSER INDUSTRIES, INC
3535 WEST 47TH STREET • CHICAGO, ILLINOIS 60632 • (312) 523-1300

October 30, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C.

Subject: Order No. 35921 dated 10/24/73

Gentlemen:

We endorse ABC-TNT's stand in reducing rates based on delivery into their terminal.

We have been using Common Carriers over the years; however, due to the rising rates we have been forced to seek better rates so that we can remain competitive with our products. Our solution to this problem has been to ship via Associations which offer lower rates.

We did not want to divert from Common Carriers, but in order to remain competitive we have been forced into these drastic measures.

At this point, we have diverted 350,000 lbs. per month.

Very truly yours,

DRESSER HAND TOOL DIVISION

George W. Fogel

George W. Fogel
Traffic Manager

GWF:i

EXHIBIT NO. 3
DOCKET NO. 35921

Wilson Pharmaceutical & Chemical Corporation

Prudential Plaza · Chicago, Illinois 60601 · 312-527-5410

Frank A. Disviscour
General Traffic Manager

Oct. 30, 1973

Mr. Robert L. Oswald
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Interstate Commerce Commission
RE: Order No. 35921
DATE: 10/24/73
"Allowance for Delivery of
Shipments to Forwarder Facilities"

Dear Mr. Oswald;

Wilson Pharmaceutical & Chemical Corporation is a corporation with headquarters here in Chicago which utilizes the services of Trans National Transport to a great number of destinations in the United States. We use this carrier because of their expedicious service and the fact that they use piggy-back service which, in our estimation, is helping the energy crisis by keeping the long-haul truckers off the roads and conserving fuel.

It is our intention to reduce our overall costs by availing ourselves of the $1.00 per cwt allowance published in the regulatory tariffs which Trans National Transport participates. This reduction of $1.00 per cwt in the overall rate would be a definite advantage to ourselves in this competitive market and would help justify our private fleet of 50 trucks in the Chicago Area.

With freight rates constantly on the increase, labor costs at the highest level in years and raw material either unavailable or at much higher prices it behooves us in the traffic profession to use every means possible to reduce our freight costs.

Therefore, Wilson Pharmaceutical & Chemical Corporation respectfully requests that the $1.00 per cwt allowance be allowed to remain in the tariff and any protests to its removal be disallowed.

Respectfully submitted,

F. A. Disviscour

F. A. Disviscour

EXHIBIT No. 3
DOCKET No. 35921

KIRCHHEIMER BROTHERS CO.
ESTABLISHED 1894
429-445 WEST OHIO STREET
TELEPHONE - AREA CODE 312 - 321-9200
CHICAGO, ILLINOIS 60610

October 29, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington 25, D. D.

Re: Subject order No. 35921 of 10/24/73

Gentlemen:

In order for us to remain competitive in the coastal area, we need a freight incentive which we can pass on to our customers.

Therefore, we are in full support of subject order No. 35921.

Sincerely yours,

KIRCHHEIMER BROTHERS CO.

Leonard Greenberg
Traffic Manager

LG/rmm

EXHIBIT No. 3
DOCKET No. 35921

HART SCHAFFNER & MARX CLOTHES

36 South Franklin Street, Chicago, Illinois 60606
(312) FRanklin 2-6300

October 26, 1973

Mr. Robert L. Oswald, Sec.
Interstate Commerce Commission
Washington, D.C.

RE: Ord #35921 of 10-24-73

Dear Mr. Oswald:

The reduction in rate by delivering into the TNT Terminal will allow us to remain in the markets they serve, primarily the west coast.

We feel that this rate is to our economic advantage and will help us not to raise the prices on the clothing that we manufacture.

Sincerely yours,

JCWaters

J.C. Waters

JCW:pfg

EXHIBIT No. 3
DOCKET No. 35921

ADVANCE PROCESS SUPPLY COMPANY

the first name in screen printing colors, supplies, & equipment

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October 26, 1973

Mr. Robert L. Oswell
Interstate Commerce Commission
WASHINGTON, D.C.

Subject: Order No. 39921 - 10/24/73

Dear Mr. Oswell:

In order for us to remain competitive, it is necessary for us to take advantage of the delivered in rates offered by Trans National Transport.

We have been able to maintain a lid on our commidity in this area by utilizing this lower delivered in rate. We sincerely hope this rate will remain in effect.

Thank you for your assistance in this matter.

Yours truly,
ADVANCE PROCESS SUPPLY COMPANY

Daniel J. Pietro
Traffic Manager

DJP/jnp

MEMBER ... ASSOCIATION

400 North Noble Street | Chicago, Illinois 60622 | TAylor 9-1400 Area Code 312 | Export Cable "APSCO"

John Hancock 52a

EXHIBIT No. 3
DOCKET No. 35921

October 29, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C.

Dear Mr. Oswald

We have been utilizing the service of Trans National Transport to all our stores and warehouses in the States of Penna., New Jersey, Delaware and New York as provided in their tariff, T.N.T. #14, items 619 and 80040, and therefore, hope that these provisions will not be removed as the result of I.C.C. order 35921.

The savings that we have been able to effect in our transportation costs have helped us to maintain our competetive position in these times of rising prices and costs.

We would strenuosuly object to the withdrawl of these rates and the economic benefits accruing to our Company.

Thank you for your consideration.

Sincerly

A.F. Adukaitis
Traffic Manager

1515 BROADWAY • TIMES SQUARE
NEW YORK • NEW YORK • 10036

53a

EXHIBIT No. 3
DOCKET No. 35921

W.T. GRANT
COMPANY

EXECUTIVE OFFICES

November 6, 1973

Interstate Commerce Commission
Constitution & 12th Street
Washington, D. C. 20423

ATTENTION: Mr. Robert Oswald, Secretary

Ref. I.C.C. Docket No. 35921

Dear Mr. Oswald:

The W. T. Grant Company wishes to go on record in support of Trans National Transport's one dollar allowance for delivery of shipments to freight forwarder's facilities.

This allowance is a greater inducement for shippers to deliver their shipments to the freight forwarders, thus easing some of the critical problems of pick-ups within the congested New York City area.

Very truly yours,

C. W. Berger, General Traffic Mgr.
W. T. Grant Company

RK/mc

JCPenney

EXHIBIT No. 3
DOCKET No. 35921

November 7, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C.

Service Order #35921

Dear Mr. Oswald:

With reference to subject order we find Trans National Transports $1.00 reduction on traffic delivered to their origin stations to be beneficial and economical to the J. C. Penney Company and respectfully request that it continue to remain in effect.

Very truly yours,

J. C. PENNEY COMPANY, INC.

W. A. Deehan

WAD:jc
Attachment

W. A. Deehan
Traffic Division
Distribution Dept.

EXHIBIT No. 3
DOCKET No. 35921

...RS... Brushes by Baker!

November 7, 1973

ROBERT Z. OSWALD, SEC'Y.
I C C
Washington, D. C.

Re: ICC order #35921

Dear Sir:

We have used Trans National Transport lower rates on Delivered In Merchandise from time to time, and consider this rate vital in today's competitive market.

Very truly yours,

BAKER BRUSH CO., INC.

Joseph Sclafani

JS/h

56a

EXHIBIT No. 3
DOCKET No. 35921

Goody®

THE LEADING NAME IN HAIR ACCESSORIES

H. GOODMAN & SONS, INC.
969 NEWARK TPKE., KEARNY, N. J. 07032 / TELECOMB / TELEX GOODY KRNY 138447 / (201) 997-3000

November 2, 1973

Interstate Commerce Commission
Washington, D.C.

Attn: Robert L. Oswald, Secretary

SUBJECT: I.C.C. ORDER #35921

Gentlemen:

We have been using the consolidating service of Trans-National Transport for shipments to the Pacific Coast.

By delivering our shipments to this carrier, instead of waiting for pick ups, we have improved service, as compared to the forwarder which we previously used.

Since our products are low priced & their rates lower than we were paying we have improved our competitive position.

Very truly yours,
H. Goodman & Sons, Inc.

William Jacobs
Traffic Manager

WJ:me

EXHIBIT No. 3
DOCKET No. 35921

Leader CARDS ★ INC.
CONVERTERS OF FINE CARDS AND ENVELOPES
935 SOUTH FIFTH STREET ◇ MILWAUKEE, WISCONSIN 53204
(414) 645-5760

November 5, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Division
Washington, D.C.

Subject: Order No. 35921 dated 10/24/73

Dear Sir:

It is our intention in the near future to use the freight allowance on delivered freight to Trans National Transport's dock in order to take advantage of the lower rate for such service.

It would be to our advantage to have this lower rate in order to keep the cost of shipping to the coast as competitive as possible.

We sincerely hope that this rate will remain in effect for the aforementioned reason.

Yours very truly,

LEADER CARDS, INC.

Stan Catarozoli
Traffic Manager

SC/mm

NOV 7 1973

EXHIBIT No. 3
DOCKET No. 35921

CHEMTRONICS INC. 1260 RALPH AVENUE, BROOKLYN, N. Y. 11236

November 5, 1973

Interstate Commerce Commission
Washington,
D.C.

Attention: Mr. R.L. Oswald, Secy.

RE: Interstate Commerce Commission
Order #35921

Dear Mr. Oswald:

We have utilized the ABC TNT delivered in dock rate structure and have found it to be very beneficial to us in that it has kept our freight charges at a lower level.

We still intend to use this service afforded us by ABC TNT, and hope that this service will be kept intact.

Thank you.

Cordially yours,

CHEMTRONICS INC.

Al Friedman
AF/ab

59a

EXHIBIT No. 3
DOCKET No. 35921

Tensor Corporation
333 Stanley Avenue
Brooklyn, N. Y. 11207
(212) 649-2000
Cable Address:
TENSORLAMP, Brooklyn, N.Y.

tensor

November 7, 1973

Interstate Commerce Commission
Washington, D.C.

ATT: Mr. R. L. Oswald, Secretary

RE: Interstate Commerce Commission Order #35921

Dear Mr. Oswald:

During the past year, we have used the ATC TNT delivered in dock rate set-up, and have found it very useful to us in that it has kept the ever-rising freight costs at a minimum.

It is our intention to utilize this service presently and in the near future, and we hope this service will remain in tact.

Thank you.

Cordially yours,

George Sullivan
Traffic Manager

60a

EXHIBIT No. 3
DOCKET No. 35921

HERMAN H. SMITH Inc.

Manufacturers of
Electronic Components

812 SNEDIKER AVENUE - BROOKLYN, N.Y. 11207
AREA CODE 212 272-9400

November 5, 1973

Interstate Commerce Commission
Washington, D.C.

Attention: Mr. R. L. Oswald, Secretary

Subject: Interstate Commerce Commission Order #35921

Dear Mr. Oswald:

Since its existence, we have used the ABC TNT dock rate structure and have found it very beneficial since freight charges remained at a lower level.

It is our intention to retain the service afforded us by ABC TNT, and we hope this same service will remain as is.

Thank you.

Cordially yours,

Traffic Manager

EXHIBIT No. 3
DOCKET No. 35921

Sandel MARBLE CO., INC.
Manufacturers of Cultured Marble, Custom Vanity and Table Tops
403 MIDLAND AVENUE — BOX 1044
WAUKESHA, WIS. 53186, PHONE (414) 547-6866

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commision
Washington, D. C.

Subject: Order No. 35921 dated 10/24/73

Dear Sir:

In order for us to remain competitive with our products, it is necessary for us to take advantage of Trans National Transport's delivered-in rates.

Every effort is being made by our company to hold the price line. One way to achieve this goal is to take advantage of this lower rate.

We sincerely hope this rate will remain in effect.

Bill Koch
Traffic Mgr.

EXHIBIT No. 3
DOCKET No. 35921

(312) 722-4647

AA Laundry Machinery Co.

• MANUFACTURING
• REBUILDING
• SERVICING

MEMBER AMERICAN INSTITUTE OF LAUNDERING -- N.I.C.D. and L.C.A.T.A.

Commercial Dry Cleaning and Laundry Machinery • 1110 S. Kedzie Ave. • CHICAGO, ILL 60612

October 29, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C.

Subject: Order No. 35921 dated 10/24/73

Dear Sir:

In Order for us to remain competitive with our products in the Western Coastal area, it is necessary for us to take advantage of Trans National Transport's delivered-in rates.

Every effort is being made by our company to hold the price line. One way to achieve this goal is to take advantage of this lower rate.

We sincerely hope this rate will remain in effect.

Very truly yours,

AA LAUNDRY MACHINERY CO.

Phillip Zaban

Phillip Zaban - Ptr.

63a

EXHIBIT No. 3
DOCKET No. 35921

TEE-PAK, INC.
A SUBSIDIARY OF CONTINENTAL CAN CO., INC.
2 North Riverside Plaza / Chicago, Illinois 60606 / (312) 782-2020 / Cable Address "TEEPAK" Acme Code

Executive Offices

November 2, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C.

Reference: Order No. 35921 dated 10/24/73

Dear Sir:

We strongly urge that the delivered-in rates provided by Trans National Transport will remain in effect.

Since we perform a service that would normally be done by TNT when we tender shipments to their terminal facilities, we believe there should be a benefit to our company for providing this service.

By use of their delivered-in rates, it has enabled us to reduce our transportation costs and is mutually beneficial to our customers in holding our price ranges.

Very truly yours,

TEE-PAK, INC.

W. L. Weart
Traffic Manager

cc: J. O'Connell, TNT

EXHIBIT No. 3
DOCKET No. 35921

STRAWBRIDGE & CLOTHIER
MARKET AND EIGHTH AT EIGHTH, PHILADELPHIA, PA 19105

November 1, 1973

Interstate Commerce Commission
Washington, D. C.

Att: R. L. Oswald, Secretary
Re: ICC Order 35921,10/24/73

Gentlemen:

We have in recent weeks been preparing routing instruction letters to our various suppliers so that we might enjoy the savings that would be afforded by Trans National Transport's tariff, TNT 14, items 619 and 80040.

The rates provided in the above mentioned tariff are needed to help us maintain a sound position in the highly competetive retail market today.

We urge that ICC order 35921 not be allowed to remove those anticipated savings in transportation costs.

Very truly yours,

STRAWBRIDGE & CLOTHIER

FREDERIC WIGGINS
Traffic Manager

FW:s

EXHIBIT No. 3
DOCKET No. 35921

ESTABLISHED 1907
H. FREEMAN & SON
INCORPORATED
33 RD & ARCH STREETS
PHILADELPHIA, PA. 19104

NEW YORK OFFICE
1290 AVENUE OF THE AMERICAS

Nov. 1, 1973.

Robert L. Oswald, Secy.,
The Interstate Commerce Commission,
Washington, D. C.

Dear Sir:

Re: TransNational Transport Inc. Tariff TNT #14,
Items 619 and 80040.

ICC Order 35921

Application of subject dock rates has enabled us to save enough money to maintain certain markets which otherwise would have been almost impossible to service otherwise, with costs rising as they are.

Please accept this letter as our very emphatic protest against any suspension or cancellation of these rates.

Very truly yours,

H. FREEMAN & SON

By _____
Charles DeMatteo
Traffic Supervisor.

EXHIBIT No. 3
DOCKET No. 35921

G. J. AIGNER COMPANY 426 South Clinton Street Chicago, Illinois 60607 427-7414 Area 312

November 1, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C.

Re: Order No. 35921 dated October 24, 1973

Gentlemen:

The rate reduction by delivering in freight to Trans National Transport's dock has been a big help in keeping our costs down and still remain competitive in our line of business.

As you know, freight rates are continually rising and labor costs are on the same level with rates. In order to stay in business we must take advantage of any and all means to reduce our costs and still make a profit.

We respectfully request that the ICC rule in favor of allowing the $1.00 per cwt. delivered-in rate to remain in TNT Tariff No. 14.

Very truly yours,

G. J. AIGNER COMPANY

Richard Yasak
Traffic Manager

RY:mdf

EXHIBIT No. 3
DOCKET No. 35921

GOURMET LIMITED
376 E. ST. CHARLES RD., LOMBARD, ILL. 60148 • 312-627-1666

November 1, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C.

Subject: Order No. 35921 dated 10/24/73

Dear Sir:

In order for us to remain competitive with our products in the Western Coastal area, it is necessary for us to take advantage of Trans National Transport's delivered-in rates.

Every effort is being made by T.N.T. to hold the price line. One way to achieve this goal is to take advantage of this lower rate.

It would be of benefit to us and to our customers if this low rate will remain and will be approved by your office.

Very truly yours,

Robert B. Lurski, President
Gourmet Limited

RBL:mp

EXHIBIT No. 3
DOCKET No. 35921

The Lion Medal Corporation of America
Manufacturers of Advertising Book Matches
General Offices: 3433 West 48th Place, Chicago, Illinois 60632 Phone (312) 847-2244

October 30, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C.

Subject: Order No. 35921 dated 10/24/73

Dear Sir:

In order for us to remain competitive with our products in the Western Coastal area, it is necessary for us to take advantage of Trans National Transport's delivered -in rates.

Every effort is being made by our company to hold the price line. One way to achieve this goal is to take advantage of this lower rate.

We sincerely hope this rate will remain in effect.

Very Truly Yours,

Stanley Ziemba

SZ/ib

Stanley Ziemba,
Traffic Manager.

EXHIBIT No. 3
DOCKET No. 35921

1900 LOWER ROAD • LINDEN, NEW JERSEY 07036 • 201-574-0300
PRODUCTS, INC.

October 30,1973

Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C.

Dear Sir:

Reference is made to Service Order #35921 of October 24th investigating Trans National Transport's $1.00 per cwt. freight rate reduction on delivered in traffic.

We find this rate to be beneficial to our company and and hereby ask that this provision not be distrubed.

Very truly yours.

Victor Mendez
Traffic Manager

EXHIBIT No. 3
DOCKET No. 35921

the hecht co

F ST. AT SEVENTH, N. W., WASHINGTON, D. C. 20004

November 5, 1973

Interstate Commerce Commission
Washington, D. C.

Attention: Robert L. Oswald, Secretary

Ref: Order No. 35921

Dear Mr. Oswald:

The Hecht Company supports the reduction in rates for shipments received into consolidation by ABCO for forwarding to our company as it represents a great savings for our company.

Under shipping terms of F.O.B. Chicago our shippers are obligated to deliver free of charge to any point within the commercial zone of Chicago and since this method of shipping results in a reduced cost to the forwarder by not performing a pick-up service, we feel this savings should be passed on to our company in the form of a rate reduction.

Very truly yours,

THE HECHT COMPANY

W. O. Rockwell
Traffic Manager

WOR/tb

cc: 1

71a

Page 26 of 30

EXHIBIT No. 3
DOCKET No. 35921

Cumberland 9-3[illegible]
Area Code 21[illegible]

[illegible] Products INC

Leading Manufacturers of Casual Furniture . . .
Indoors and Outdoors
Tulip & Westmoreland Sts. - Philadelphia, Pa. 191[illegible]
Cable Address: "ALLUM"

October 30, 1973

Mr. Robert L. Oswald
Interstate Commerce Commission
Washington, D. C.

Dear Mr. Oswald:

We have been utilizing the services of Trans National Transport as provided for in their Tariff, TNT #14, items 619 and 80040, and therefore, hope that these provisions will not be removed as a result of ICC Order 35921.

In view of the rising prices and transportation costs, we feel that the saving is beneficial to the Shippers in maintaining a competitive and selling position.

We would strenuously object to the withdrawal of these rates.

Thank you for your consideration.

Very truly yours,

John S. Zavasky

JOHN S. ZAVASKY
Traffic Manager

ml

EXHIBIT No. 3
DOCKET No. 35921

DENTAL MFG. COMPANY, INC
900 NORTH FRANKLIN STREET • CHICAGO, ILLINOIS 60610
Phone: 664-6378 Area Code 312

Nov 5,1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C.

Subject: Order No. 35921 dated 10/24/73

Dear Sir:

In order for us t o remain c ompetitive with our products in Western c oastal Areas, it is necessary f or us t o take advantage of Trans-Nationals Transp ort delivered in rates.

Every effort is being maDE BY OUR COMPANY to hold the price line. One way to acheive this goal is to take advantage of this lower rate.

We sincerely hope this rate will remain in effect.

Sincerely,

Edward M. Lang

Edward M.Lang, Pres.

QUALITY PRODUCTS FOR OVER A QUARTER CENTURY
JET REPAIR ACRYLIC • PREMIUM C/L ACRYLIC • PLASTIC IMPRESSION POWDER • WHITE BEAUTY ALLOY
FIT COR PASTE & SOLVENT • INSTANT TRAY MIX • RELINE ACRYLIC • CROWN & BRIDGE CEMENT

73a

fine photographic equipment

EXHIBIT No. 3
DOCKET No. 35921

&

Burke & James Inc.
333 W. LAKE ST. CHICAGO, ILL. 60606 312/372-5432

Nov. 5, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C.

Subject: Order No. 35921 dated 10/24/73

Dear Sir:

In order for us to remain competitive with our products in the Western coastal area, it is necessary for us to take advantage of Trans National Transport"s delivered-in rates.

Every effort is being made by our company to hold the price line. One way to achieve this goal is to take advantage of this lower rate.

We sincerely hope this rate will remain in effect.

Mac Arthur Antigua
Traffic Supervisor

BURKE & JAMES, INC.

EXHIBIT No. 3
DOCKET No. 35921

AMERICA'S LARGEST SPECIALISTS IN PRINTED SCHOOL FORMS

Established 1923

SCHOOL SERVICE COMPANY, INC.

157 WEST ONTARIO STREET • CHICAGO, ILLINOIS 60610 • TELEPHONE DELAWARE 7-6833

Nov. 5, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C.

Subject: Docket No. 35921 Dated 10_24_73

Dear Sir:

In order for us to remain competitive with our products in the western coastal area, it is necessary for us to take advantage of Trans National transports delivered in rates.

Every effort is being made by our company to hold the price line. One way to achive this goal is to take advantage of this lower rate.

We sincerely hop this rate will remain in effect.

Sincerely,

McAlister J Merchant
School Service Company, Inc.

[illegible] EASTERN AVENUE • NEW YORK, NEW YORK [illegible]

75a

EXHIBIT No. 3
DOCKET No. 35921

NORCROSS
INC.

November 5, 1973

The Interstate Commerce Commission
Washington, D. C.

Attention: Robert L. Oswald, Secy.

Dear Sir:

This letter has reference to I.C.C. Ord. #35921.

We have been enjoying a Dock Rate thru the services of TNT here in New York City. The Dock Rate has been a great help in our ability to meet competition from other companies in the mid-west who are closer to our customers.

NORCROSS INC. would like very much and implore you to do whatever has to be done to see that the TNT Dock Rate continues.

Sincerely,

NORCROSS INC.

James V. Pareso

James V. Pareso
Traffic Manager

JVP/es

LETTER OF TNT INTERSTATE COMMERCE COMMISSION DATED NOVEMBER 23, 1973

Trans National Transport 201 Eleventh Avenue, New York, N.Y. 10001 212-924-2220
Division of National Carloading Corporation

November 23,1973

Interstate Commerce Commission
Washington, D. C. 20423

Attention: Mr. J.T. Fittipaldi
Deputy Director
Section of Rates

Subject; Docket No. 35921 - Allowance for delivery of shipments to Forwarder facilities.

Gentlemen:

By I.C.C. order dated October 24, 1973 the above subject docket was directed to be handled under modified procedure with the opening statement of facts and argument by respondents and any parties supporting respondents on or before 20 days from the service date.

Respondent, TNT Tariff Agents, Agent, complied with this order and timely filed its opening statement of facts and arguments on November 9,1973. Said opening statement included three exhibits and referring specifically to Exhibit 3, respondent enclosed in exhibit form a group of 30 letters from representative shippers throughout the country supporting these tariff provisions under investigation.

On October 19,1973 when this matter was placed under investigatigation respondent believed that it was important for the Commission to be made aware of shippers supporting its action in connection with the tariff matter here involved. Respondent therefore determined by personally contacting shippers throughout the country that considerable support existed and therefore Exhibit 3 was prepared. Since the initial filing of the opening statement respondent has been made aware of an additional 38 letters that have been directed to the Commission in support of the matter here involved.

The Commission's attention is respectfully directed to various letters being sent to the supporting shippers by the Commission which included an attachment of the order of the proceeding here involved. These letters indicated that any person supporting respondent is required to file verified statements on or before November 13 and that if their views are to be formally considered in the investigation, they must file a pleading as required by the order.

Respondent does not understand the position taken by the Commission in this matter as it has been a general practice to accept pleadings, whether for or against, from the shipping public without adherence to the technical requirements of the General Rules of Practice. As a practical matter it is relatively impossible within the time frames of any order issued by the Commission, to notify interested parties and have them respond in the manner as prescribed by the General Rules of Practice.

WIC

Continued..../

It is likewise respondent's belief that the burden to notify any possible interested party should rest with the Commission and it is apparent that this obligation has not been fulfilled by the Commission. The Commission's letters to interested shippers, which are dated and possibly received after the established date for filing opening statements of facts and arguments, would clearly indicate that the truly interested shipper is precluded from entering any acceptable testimony if the strict guidelines of the General Rules of Practice are to be followed.

We are sure the Commission is aware that the multitude of shippers throughout the United States are not familiar with the specific procedures as detailed in the General Rules of Practice, and the Commission is strongly urged to accept the 63 letters involved as opening statements of facts and argument by said shippers. Respondent believes that by including the first 30 letters as an exhibit in its opening statement, which was timely filed with the proper number of copies and also furnished to all parties involved, that technically the General Rules of Practice have been complied with. A Commission decision not to accept these letters would have the effect of predetermining the ultimate outcome of the proceeding. Respondent likewise believes that the shipping public's interest would best be served by accepting these letters which is in complete harmony with the National Transportation Policy.

Respectfully submitted,

NATIONAL CARLOADING CORPORATION

F. H. Zentner
Vice President

FHZ:fb

cc: Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

John I. Mayfield, Jr. (interested party)
Eastern Central Motor Carrier Association
P. O. Box 3000
Akron, Ohio 44310

H. L. Rosenthal (interested party)
Litschultz Freight Forwarders, Inc.
20 North Franklin St.
Chicago, Ill. 60606

WIC

STATEMENT OF FACT AND ARGUMENT BY THE EASTERN CENTRAL MOTOR CARRIERS
Before the

INTERSTATE COMMERCE COMMISSION

RECEIVED
DEC 12 1973

DOCKET No. 35921

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

STATEMENT

OF

FACTS AND ARGUMENT

MODIFIED PROCEDURE

THE EASTERN CENTRAL MOTOR CARRIERS ASSOCIATION, INC.

PROTESTANT

John I. Mayfield, Jr.
Registered Practitioner

FOR PROTESTANT

2545 Bailey Road
Cuyahoga Falls, Ohio
Mail Address: P. O. Box 3600
Akron, Ohio 44310

Dated: December 11, 1973
Due: December 13, 1973

Before the

INTERSTATE COMMERCE COMMISSION

DOCKET No. 35921

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

STATEMENT

OF

FACTS AND ARGUMENT

Comes now The Eastern Central Motor Carriers Association, Inc., protestant in the above-styled proceeding, and files this its Statement of Facts and Argument and respectfully says:

STATEMENT OF THE CASE

Under the date of October 11, 1973, this Association protested and requested suspension of Item 93 on 8th Revised Page 12 to Lifschultz Fast Freight, Inc., Tariff No. 12-B, ICC-FF No. 8 (Lifschultz) and requested that an investigation be instituted against Items 619 and 8004 of TNT Tariff Agents, Inc., Agent Tariff No. 14, ICC-FF No. 15. The assailed matter involved an allowance of one dollar ($1.00) per hundred pounds on less than trailer volume shipments (Lifschultz) or LTL shipments (TNT) that have been transferred to the freight forwarder at its facility without expense to the forwarder.

After due consideration of protestant's petition for suspension and investigation and the reply for and on behalf of Lifschultz, the Suspension and Fourth Section Board, by its order dated October 24, 1973, concluded to place the Lifschultz proposal under suspension to and including May 24, 1974, in I. & S. Docket No. 8894, Allowance For Delivery Of Shipments To Forwarder Facilities; and the Commission, by its own motion, order dated October 24, 1973,

instituted an investigation into the TNT proposals, matter in issue herein, under Docket No. 35921, Allowance For Delivery Of Shipments To Forwarder Facilities.

By order dated October 24, 1973, the matter, Docket No. 35921, supra, was assigned for handling under modified procedure with respondent's opening statement due November 13, 1973 and protestant's statement due thirty days thereafter.

Protestant acknowledges the receipt of respondent's timely filed opening statement and herewith submits its statement of facts and argument.

STATEMENT
OF
R. O. SMITH

My name is R. O. Smith. I am employed as a Rate Analyst in the Commerce Department of The Eastern Central Motor Carriers Association, Inc., located at 2545 Bailey Road, Cuyahoga Falls, Ohio. My duties include the analysis of competing rail and freight forwarder publications with particular emphasis being given to the effect upon tariffs maintained by the Association for its members and participating carriers. I am conversant with the issues in this proceeding and if oral hearing were to be required, I would testify as follows:

The involved proceeding concerns Items 619 and 80040 of the TNT Tariff Agents, Inc., Tariff 14, I.C.C.-F.F. 15, under investigation in Docket 35921, Allowance for Delivery of Shipments to Forwarder Facilities. In order to clearly illustrate what is here involved, I have reproduced the assailed rule in Item 619 which reads as follows:

SHIPMENTS DELIVERED TO FORWARDER

"Rates, charges and provisions which do not include pick-up service will apply only when shipments are delivered directly to Forwarder's facility. Shipments which are delivered to Forwarder's Agents will not be considered to be delivered to the Forwarder and will not be subject to rates, charges and other provisions which do not include pick-up service.

"Except as otherwise provided, where tariffs making reference to this tariff do not provide LTL rates applicable when no pick-up service is afforded, the rates in the applicable tariffs making reference to this tariff will be subject to the provisions of Column D of Note 1 or in the absence of specific provisions or Column D the rates will apply less one dollar per hundred pounds. Where provisions are made in tariffs making reference hereto for rates which do not include pick-up service, such rates will not apply except at New York, N.Y. on shipments under 500 pounds they will apply, and in lieu thereof the rates which do include pick-up service will apply and be subject to Column D of Note 1 herein or in the absence of specific provisions or Column D, the rates which include pick-up service less one dollar per hundred pounds

The provisions of Item 80040 read the same as Item 619 except in Paragraph 2, the word LTL appears to have been omitted.

I have noted that the involved rules were originally published in Item 619-A, Supplement 29 to the ABC Freight Forwarding Corporation, Tariff 9-E, I.C.C.-F.F. 77, and Item 619-A, Supplement 122 to Midland Forwarding Corporation Tariff 4-C, I.C.C.-F.F. 35, both supplements became effective July 31, 1972. The items were later transferred and brought forward as reissued matter in TNT Tariff Agents, Inc., Tariff 14, I.C.C.-F.F. 15, effective September 10, 1973. I also noted that when the original provisions were established on July 31, 1972, they were improperly symbolized with a pyramid "▲" no change symbol rather than the "●" reduction symbol which would have been the correct symbolization.

If the original publication had been properly symbolized this Association would have most certainly filed a protest against the matter.

I have prepared my Exhibit ROS-1____, which is a representative comparison of respondent's present allowances with those of Eastern Central members and also with those of Acme Fast Freight, Inc., Lifschultz Fast Freight, Inc. and Republic Freight System, Inc., and with those of Lifschultz Fast Freight, Inc., which are under suspension in I. & S. Docket No. 8894, Allowance for Delivery of Shipments to Forwarder Facilities.

I have examined respondent's Exhibit No. 1 of his opening Statement and have determined that in nearly all of his examples respondent has compared partial service commodity rates (dock rates) with full service class rates.

Respondent's Exhibit No. 2 of his opening Statement is of a similar nature. There he has compared the full service class rates

published in Section 5.1 of TNT Tariff Agents, Inc., Tariff 3, I.C.C.-F.F. 4 and compared them to the partial service class rates (dock rates) named in Section 6 of the tariff. In my Exhibit No. ROS-2____, I have taken the example set forth in respondent's Exhibit No. 2 and by applying the provisions of the assailed allowance I have added reference (3) which is the full service class rate (1) less one dollar. This reflects the true effect of the assailed provisions.

This concludes my direct testimony.

R. O. Smith

VERIFICATION

State of Ohio)
Summit County) SS:

R. O. Smith, being duly sworn, deposes and says that he has prepared the foregoing statement and knows the contents thereof, and that the same are true as stated.

R. O. Smith

Subscribed in my presence and sworn to before me by the affiant above named this eleventh day of December, 1973.

EXHIBIT NO. ROS-1___
DOCKET NO. 39521
WITNESS: R. O. Smith

STATEMENT
PROVIDING A COMPARISON OF RESPONDENT'S PRESENT
ALLOWANCES WITH THOSE OF EASTERN CENTRAL
MEMBERS AND OTHER FREIGHT FORWARDERS.

RESPONDENT'S PRESENT	C - E.C.M.C.A. PRESENT	OTHER FORWARDERS' PRESENT	ALLOWANCE UNDER SUSPENSION IN I. & S. DOCKET NO. 8894
A - $1.00 B - 10¢ B - +15¢ B - *20¢	8¢ #15¢	D - 5¢ D - ¢10¢ D - %15¢ E - 5¢ E - *20¢	F - $1.00

EXPLANATION OF REFERENCE MARKS:

A - Per Item 619 of the TNT Tariff Agents, Inc., Tariff 14, I.C.C.-F.F. 15.
B - Per Item 660 of the TNT Tariff Agents, Inc., Tariff 14, I.C.C.-F.F. 15.
C - Per Item 200-B, Supplement 22 to The Eastern Central Motor Carriers Association, Inc., Agent, Tariff 149-H, ICC ECA 149-H.
D - Per Item 115-B, Supplement 22 to the Acme Fast Freight, Inc., Tariff 231-E, I.C.C.-F.F. 308 and per Item 295-B, Supplement 33 to the Republic Freight System, Inc., Tariff 15-F, I.C.C.-F.F. 305 (Republic Carloading and Distributing Co., Inc. series).
E - Per Item 140, 5th Revised Page 16.1 of the Lifschultz Fast Freight, Inc., Tariff 12-B, I.C.C.-F.F. 8.
F - Per Item 93, 8th Revised Page 12 of the Lifschultz Fast Freight, Inc., Tariff 12-B, I.C.C.-F.F. 8. Under suspension in I. & S. Docket No. 8894, Allowance for Delivery of Shipments to Forwarder Facilities.
+ - Applicable only at Louisville, Kentucky.
* - Applicable only at Milwaukee, Wisconsin.
# - Applicable only at Cleveland, Ohio; Detroit, Michigan; and St. Louis, Missouri, and only for named carriers.
¢ - Applicable only at Centerville, Illinois; East St. Louis, Illinois; Minneapolis, Minnesota; St. Louis, Missouri; St. Paul, Minnesota, and on shipments of Safes at Toledo, Ohio.
% - Applicable only at Sioux City, Iowa.

EXHIBIT NO. ROS-2___
DOCKET NO. 35921
WITNESS: R. O. Smith

STATEMENT
PROVIDING A COMPARISON OF RESPONDENT'S PRESENT CLASS RATES FROM NEW YORK, NEW YORK TO CHICAGO, ILLINOIS ILLUSTRATING THE DIFFERENCE BETWEEN THE FULL SERVICE RATE; THE PUBLISHED DOCK RATE; AND THE DOCK RATE RESULTING FROM THE ASSAILED ALLOWANCE.

	CLASSES														
MINIMUM WEIGHT	100			92½			85			77½			70		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
500 Pounds	910	880	810	847	813	747	780	747	680	713	685	613	650	623	550
1,000 Pounds	781	759	681	731	701	631	671	645	571	615	591	515	560	532	460
2,000 Pounds	725	701	625	673	648	573	619	596	519	568	546	468	522	495	422
5,000 Pounds	614	591	514	566	546	466	514	496	414	474	451	374	429	408	329

Rates in cents per hundred pounds.

EXPLANATION OF REFERENCE MARKS:

(1) - Full Service rates per Section 5.1 of the TNT Tariff Agents, Inc., Tariff 3, I.C.C.-F.F. 4. Rates include pick-up service.

(2) - Dock rates per Section 6, Supplement 1 to the TNT Tariff Agents, Inc., Tariff 3, I.C.C.-F.F. 4. Rates apply only on shipments delivered to forwarder's terminal.

(3) - Dock rates when assailed rule has been applied. Rate has been determined by reducing the (1) full service rate by one dollar ($1.00).

VERIFIED STATEMENT
OF
PAUL R. HADLEY

My name is Paul R. Hadley and I am employed as Supervisor of Cost Studies, Research and Economics Department, The Eastern Central Motor Carriers Association, Inc., P. O. Box 3600, Akron, Ohio, 44310; located at 2545 Bailey Road, Cuyahoga Falls, Ohio, 44221. I have been employed by Eastern Central for the past fifteen years serving in various capacities. Prior to my employment with Eastern Central, I had acquired experience with a large railroad, a large manufacturing firm, and the military service, encompassing various traffic and transportation duties and responsibilities. My total experience in the transportation field covers twenty-one years. In my present position I supervise the gathering and processing of annual reports, financial reports, carrier affiliate data, and various exhibits, statistics and studies submitted by the transportation industry, as well as the Interstate Commerce Commission publications. I am familiar with the cost formulas and studies used for the determination of cost, and have been required to use these formulas for the development of cost data in prior proceedings.

In order to clearly illustrate what is here involved, I have prepared an exhibit which shows the cost applicable on shipments picked up by the Motor Common Carriers. This comparison is shown in my Exhibit No. PRH-1 _____.

My Exhibit No. PRH-1 _____, covers the cost applicable on shipments weighing 100 pounds through 1000 pounds picked up in Central Region, Eastern Central Territory, New England Region - Group II and Middle Atlantic Region. Here I have applied cost only in connection

with the pickup operation. I have used Table 2 "Variable Terminal Cost at Origin and Destination", Column 3 divided by 2, to reflect the pickup cost. These costs have been adjusted to reflect the fully allocated expense level.

The exhibit indicates the cost of performing the pickup service in the cited regions and territories will be slightly above one dollar ($1.00) on shipments weighing 300 pounds and much less on larger size shipments. The freight forwarder industry and shippers would also be facing similar expenses on the shipments they handle.

It should be noted that on a bare cost basis, that is without the adjustments for total costs (111.11%) and fully allocated costs (93% operating ratio), the figures in my Exhibit No. RRH-1_____ would be much lower.

I have reviewed the statement by Mr. F. H. Zentner, Vice President, TNT Tariff Agents, Inc., Agent. He has made a statement on Page 4 to the effect "The cost to respondent freight forwarders for providing pickup service, not only within the terminal area, but, outside the same, is skyrocketing....". No underlying data was submitted to substantiate this contention nor its costs to provide the pickup service. Also, there were no supporting evidence showing shippers' costs for providing the pickup function the shippers have experienced since the allowance, under investigation in Docket No. 35921, Allowance for Delivery of Shipments to Forwarders Facilities, has been effective.

The underlying work papers used in connection with my exhibits are available for examination at this office.

_____

Paul R. Hadley

VERIFICATION

State of Ohio)
) ss
Summit County)

Paul R. Hadley, being duly sworn, deposes and says that he has prepared the foregoing statement and that the contents thereof are true as stated.

Paul R. Hadley

Subscribed in my presence and sworn to before me by the affiant above named this 11th day of December, 1973.

Notary Public

Exhibit No. PRH-1
Docket No. 35921
Witness: Paul R. Hadley

COMPARISON SHOWING FULLY ALLOCATED REGION AND TERRITORY PICKUP COST OF MOTOR CARRIER TARIFF BUREAUS

WEIGHT OF SHIPMENT	A - STATEMENT NO. 2C1-71, JULY, 1973			
	1/ CENTRAL REGION	2/ EASTERN CENTRAL TERRITORY	3/ NEW ENGLAND REGION GROUP II	4/ MIDDLE ATLANTIC REGION
100	247.2	302.9	242.0	253.4
200	145.9	178.5	149.1	152.4
300	109.1	135.4	113.7	115.8
400	89.7	112.9	95.0	95.8
500	78.3	99.2	83.4	84.1
1000	51.4	67.4	57.9	55.4

Costs in cents per hundred pounds

Explanation of Reference Marks:

A - Statement No. 2C1-71, July, 1973 "Cost of Transporting Freight By Class I and Class II Motor Common Carriers of General Commodities" By Regions or Territories For the Year 1971.

Pickup costs have then been increased by 111.11 percent to produce total costs per Item 4, Pare 4 of Statement No. 2C1-71. Total costs have further been extended to provide a margin of profit on an assumed operating ratio of 93 percent. This is the fully allocated cost level.

1/ Central Region, Page 27, Table 2, Column 3 divided by 2 to reflect pickup service only.

2/ Eastern Central Territory, Page 40, Table 2, Column 3 divided by 2 to reflect pickup service only.

3/ New England Region, Group II, Page 66, Table 2, Column 3 divided by 2 to reflect pickup service only.

4/ Middle Atlantic Region, Page 79, Table 2, Column 3 divided by 2 to reflect pickup service only.

ARGUMENT

I

Witness R. O. Smith has illustrated, by his Exhibit No. ROS-1___, that the one dollar ($1.00) allowance at issue in this proceeding is well above the allowances presently in effect for respondent's competitors and the same as that in issue in I. & S. Docket No. 8894, Allowance For Delivery Of Shipments To Forwarder Facilities. In fact, the exhibit reveals that respondent has various allowances in effect for its members ranging from ten cents (10¢) to one dollar ($1.00). It must be assumed that since the provisions for the allowance of one dollar ($1.00), in issue herein and as published in Item 619, refer to Less Than Truckload (LTL) it would only apply on less than truckload shipments and the other allowances would apply on truckload or volume shipments.

Continued effectiveness of the assailed allowance would permit respondent's members an advantage that would be disruptive of the presently applicable rate structures. This is evident by the remarks submitted for and on behalf of Lifschultz Fast Freight, Inc., respondent in I. & S. Docket No. 8894, supra, where at Page 1 of its argument it stated:

> "In spite of the fact that simultaneously with the investigation and suspension herein in No. 8894, the Commission instituted an investigation under Docket No. 35921 investigating the schedules of TNT Tariff Agents, Inc., Agent Tariff No. 14, ICC-FF No. 15 on Page 31 Item 619 and on Page 108 Item 80040 which contain provisions similar to those published by Respondent here under suspension, Respondent remains at a perilous competitive disadvantage."

And on Pages 2 and 3 of its Exhibit 1 it stated:

"As acknowledged by protestant, our assailed schedule was issued to meet freight forwarder competition of A.B.C. Freight Forwarding Corporation, Midland Forwarding Corporation and National Carloading Corporation as published for their account by TNT Tariff Agents, Inc., Agent, Tariff No. 14, ICC-FF No. 15, Items 619 and 80040. These ICC regulated freight forwarders offer shippers the identical allowance which is here in issue. (Rates hereinafter stated in cents per 100 Pounds).

It is vital to Respondent's efforts to maintain his service and soundness that he not permit himself to be priced out of his traffic. It is a fact as stated by protestant himself, that our competitors have had this advantage over us for months. They have used this advantage in their very active solicitation and have already diverted traffic from our service and will divert more unless we meet this freight forwarder competition head on. In fact it is actually through this active solicitation that we became aware of our disadvantage. Substantial users of our service have inquired if we will meet these provisions, otherwise we face diversion of the traffic. Traffic diversion is the worst calamity that can befall a freight forwarder. The very nature of forwarding demands accumulation of sufficient quantities to ship regularly in carload and truck load lots. Where substantial diversion is suffered, the necessary accumulations take days which results in less frequent forwarding and downgrading of service. Without adequate service the rate of diversion is accelerated. In other words we must have traffic to maintain service, for without service we lose our traffic and our solvency."

Furthermore, the Commission recently had before it I. & S. Docket No. 8880, Pickup Allowance to Consignor At Harrisburg, Pa. and the Suspension and Fourth Section Board Case No. 59825, which concerned pickup allowances of 30, 40, 50 and 60 cents per hundred pounds at various freight forwarder terminals. These allowances were to be awarded the shippers when they tendered their shipments to the forwarder

at its terminal facilities. Those publications were made by Freight Forwarders Tariff Bureau, Inc.; Acme Fast Freight, Inc.; and Republic Freight System, Inc., and they have now been cancelled. Protestant submits that if the matter in issue herein is permitted continued effectiveness, these freight forwarders and the motor carriers will be forced to make similar adjustments. In Morgan Forwarding Co., Pickup or Storage, 258 ICC 771, Division 3 stated at Page 775:

> "The proposed allowances in and of themselves do not appear to be excessive, considered solely from the standpoint of the cost of performing the service. It is possible that allowances of 8, 10, and 12 cents, as proposed, are less than it would cost the forwarder actually to pick up the freight. But we believe that this is one of those competitive rate cuts which in the end does the carriers no good and is contrary to the national transportation policy of Congress, as declared in the statute which we administer, wherein we are directed, among other things, to foster sound economic conditions in transportation and among the several carriers." (Underscoring added)

II

Protestant does not deny the fact that the publication of rates applicable form the terminals or receiving stations (dock rates) is a well established method of publishing rates; however, protestant does object to the assailed allowance because of its severity and its all encompassing nature. Protestant submits that the instant matter should be ordered cancelled without a showing of its competitive necessity and special circumstances that would warrant it continued effectiveness.

III

Respondent has presented its Exhibits No. 1 and 2 purporting to provide a comparison of dock rates and full service rates in an effort to illustrate the existance of large spreads between dock and full service rates.

The comparisons as presented in respondent's Exhibit No. 1, have

compared, in most cases, commodity rates established on a partial service with full service class rates. This point is revealed by Witness R. O. Smith in his statement. Respondent is, therefore, comparing partial service rates, which have been established because of competitive factors or special mitigating circumstances, with class rates, which are generally considered as the maximum rate level. Such comparisons should not be accepted as reflecting the effect of a general class rate adjustment. It is also doubtful that the cited dock rates have been tested to prove their own justness and reasonableness.

In respondent's Exhibit No. 2, it has compared its class rates from New York, New York to Chicago, Illinois on both a full service basis and a partial (no pickup) service basis. Respondent has indicated the effect of the assailed allowance in its explanation of reference "(2)" where it is stated that "On shipments of 500 lbs. or more these rates are superseded by the provisions here at issue. They would be $1.00 less than the rates which include pick-up." There is no illustration to graphically show the effect of the assailed matter. For this reason, Witness R. O. Smith has prepared his Exhibit No. 2. Like respondent's Exhibit No. 2, it reveals that respondent has a built in allowance or discount in its class rate structure for shipments tendered to the forwarder at its facilities (no pickup). Witness R. O. Smith's exhibit also illustrates that the assailed allowance has increased the differencial by as much as seventy cents (70¢), 500 pounds at Class 100.

IV

The principal issue in proceedings of the nature at hand is its justness and reasonableness within the meaning of Section 415 of the Interstate Commerce Act. Section 415 of the Interstate Commerce Act provides that if the shipper or owner of property transported in service subject to this

part directly or indirectly renders any service connected therewith, the allowance therefor, to such owner, shall be no more than is just and reasonable. In administering the provisions of this section, the Commission has consistently adhered to the principle that the amount paid should be (1) not more than is just and reasonable for the service or instrumentality furnished, and (2) that the amount should not exceed the reasonable cost of the shipper or receiver of the goods for performing the service. Whichever of these two sums is the lower marks the maximum the carrier may pay. See Freight Forwarder Allowances at Baltimore, Maryland, 315 I.C.C. 719, 721. Also see Allowances for Privately Owned Tank Cars, 258 I.C.C. 371, 387; Pickup and Delivery Allowance at Detroit, Mich., 301 I.C.C. 319; Delivery Allowance in Central Territory, 309 I.C.C. 187, 188; Combined Bill of Lading, Freight Bill Allowance Eastern Central States, 323 I.C.C. 168, 172; I. & S. Docket No. M-19784, Allowances for Loading LTL Shipments at Syracuse, N.Y., decided November 1, 1965; I. & S. Docket No. M-23221, Pickup Allowance At Cleveland and Chicago, decided November 17, 1969; and I. & S. Docket No. M-24140, Pick-Up & Delivery Allowances, Bird Trucking Company, decided January 12, 1971. This principle was also upheld by the courts. See New York Central Railroad Company v. United States, 199 F Supp. 955, and El Dorado Oil Works v. United States,328 U.S. 12 (1946).

Necessary elements, therefore, in substantiating the reasonableness and lawfulness of any proposed allowance is convincing evidentiary presentations by the proponent, illustrating that the contemplated allowance is no more than the costs experienced by the carrier in normally providing the allowable service or insturmentality of transportation, and that such allowance will not exceed the cost to the shippers or receivers for performing the involved function. Payment of allowances to any shipper or

receiver for the performance of the involved service which in fact costs that party less would have the effect of granting an unlawful concession and reducing the charges below the normal tariff rates for the transportation services performed. Briefly stated, an allowance which exceeds the cost of the service furnished or which exceeds the shippers' or receivers' cost for performing the service is unjust and unreasonable.

Respondent has not submitted any presentation to show that the assailed allowance will not exceed its costs incurred in providing the pickup service nor have any shippers revealed their costs.

To illustrate the costs incurred in providing the pickup services, Witness Paul R. Hadley has prepared his Exhibit No. PRH-1_____. It reveals that the motor carrier costs as prepared by the Cost Finding Section of the Interstate Commerce Commission and presented as Statement No. 2C1-71, when computed on a fully allocated basis will result in situations whereas the assailed allowance of one dollar($1.00) will exceed the costs of providing the pickup services. In fact, Witness Hadley has indicated that a showing based on the bare costs (variable costs) incurred in providing the service will reveal the allowance to be much greater than the costs.

Protestant submits that although it would appear that on shipments of less than 300 pounds the cost would greatly exceed the allowance, the opposite would be true in the majority of the cases. This being because most shippers, if not all, who will provide their own pickup services will tender to the forwarder several shipments when combined will weigh in excess of 300 pounds. Protestant, therefore, contends that the costs in Witness Hadley's Exhibit No. 1 for weights in excess of 300 pounds are more representative of the shipments that will be granted the involved allowance.

Although the costs submitted by Witness Hadley are for motor

carriers, protestant submits that they are equally representative of the costs that would be incurred by respondent and the involved shippers.

V

WHEREFORE, in view of the foregoing, protestant respectfully prays that the Commission will find:

(1) That the assailed allowance is exorbitant;

(2) That the provisions are disruptive in character and will exert a distructive impact on the existing rate structure;

(3) That protestant has shown that the allowance will exceed the costs incurred in providing the service;

(4) That the matter contravenes the mandates of Section 415, Part IV of the Interstate Commerce Act; and,

(5) That the matter under investigation should be ordered cancelled and this proceeding discontinued.

Respectfully submitted,

THE EASTERN CENTRAL MOTOR CARRIERS ASSOCIATION, INC.

PROTESTANT

_____

John I. Mayfield, Jr.
Registered Practitioner

FOR PROTESTANT

2545 Bailey Road
Cuyahoga Falls, Ohio
Mail Address: P. O. Box 3600
Akron, Ohio 44310

Dated: December 11, 1973
Due: December 13, 1973

File: C-6876

cmb

CERTIFICATE OF SERVICE

I hereby certify that I have this day served upon all parties of record in this proceeding by mailing first class mail, postage prepaid, a copy thereof properly addressed to each such party.

Dated at Cuyahoga Falls, Ohio, this eleventh day of December, 1973.

_____

John I. Mayfield, Jr.

ORDER OF INTERSTATE COMMERCE COMMISSION 97a
DATED DECEMBER 11, 1973 SERVICE DATE

ORDER DECEMBER 20 '73

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D.C., on the 11th day of December, 1973.

No. 35921

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

It appearing, That investigation of the tariff change here involved was instituted on October 19, 1973; and that modified procedure was directed by order of October 23, 1973, with respondent's due date for filing its statement set as November 13, 1973, and protestant's due date for filing its statement designated as December 13, 1973;

It further appearing, That respondent timely filed its statement of facts and argument, including as an attachment thereto 30 letters from various shippers in support of the involved tariff change; and that additional letters of support, some after the due date for respondent's pleadings, have been received by the Commission, none of which are verified or contain a certificate of service showing they have been served on other parties to this proceeding;

It further appearing, That under date of November 23, 1973, respondent has filed a letter request with the Commission to accept these additional letters of support in the formal record, which letter is being treated as a petition for waiver of rule 22 of the General Rules of Practice, such rule requiring that all pleadings in formal proceedings must be served on all other parties and must contain a certificate of service attesting that such service has been made;

And it further appearing, That said informal letters are not in compliance with rule 22 and are merely cumulative; wherefore:

It is ordered, That the petition be, and it is hereby, denied.

By the Commission, Division 2.

ROBERT L. OSWALD
Secretary

(SEAL)

REPLY STATEMENT BY TNT TARIFF AGENTS 98a

Before The

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 35921

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

RESPONDENT'S REPLY STATEMENT

MODIFIED PROCEDURE

Dated: December 28, 1973

Due: January 2, 1974

F. H. Zentner
Vice President
TNT Tariff Agents, Inc., Agent
201 Eleventh Avenue
New York, New York 10001

The matter at issue herein will not affect the quality of the human environment.

Comes now TNT Tariff Agents, Inc., Agent, hereinafter also referred to as TNT, respondent in the above-styled proceeding, and acknowledges receipt of protestant's timely filed statement of facts and argument and herewith submits its reply statement: 99a

Protestant, through its statement made by R. O. Smith makes reference to the fact that the initial publication of the one dollar reduced rate made by ABC Freight Forwarding Corporation in Item 619-A, Supplement No. 29 to its Tariff 9-E, I.C.C.-F.F. No. 77 and by Midland Forwarding Corporation in Item 619, Supplement No. 122 to its Tariff 4-C, I.C.C.-F.F. No. 35, both of which became effective July 31, 1972, failed to indicate proper symbols in violation of tariff publishing rules, showing that these provisions were reductions. In compiling TNT Tariff Agents, Inc., Agency Tariff No. 14, I.C.C.-F.F. No. 15 here involved, compilers did not research the circumstances surrounding the tariff matter they were reproducing and, therefore, it was merely a compiling oversight that the provisions here involved were not symbolized as new matter. In fact, as it pertains to the instant proceeding, no symbolization was required under the existing tariff circular rules.

Protestant, again through witness R. O. Smith's Exhibit ROS-2 has merely reproduced TNT's Exhibit No. 2 which does nothing more than depict the actual effect that the assailed provisions will have which was the clear intention of TNT initially. Certainly no new matter or information is being offered by this reproductive exhibit.

Witness R. O. Smith for protestant attempts to point out to the Commission that TNT's Exhibit No. 1 attached to its opening statement, in most cases compares partial service commodity rates (dock rates) with full service class rates. It is not clear to respondent what is intended because TNT's Exhibit No. 1 was deliberately prepared to demonstrate to all parties concerned that the establishment of rates on various commodities that do not include a pick up

(dock rates) is a well established method of publication by freight forwarders. Absent such dock rates and absent general commodity rates which are lower than the class rates, there can be only one comparison to make and that comparison is between the dock rates as named with the applicable class rates which include pick up between the same two points. As clearly indicated in TNT's Exhibit No. 1 the difference between the specific dock rates and the class rates is in most cases considerably in excess of the one dollar reduction here involved. 100a

As brought out by TNT's opening paragraph on Page 2 of its opening statement of facts and argument, TNT is of the opinion that the caption "ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDERS FACILITIES" assigned to this proceeding is misleading and tends to cloud the basic issue here involved. Allowances in lieu of pick up must be claimed by shippers whereas dock rates here involved will result in savings to shipper or consignee, whoever pays or bears the freight charges. It should be noted that R. O. Smith's Exhibit ROS-2 in explaining Column (3) considers the adjusted rate per hundred which includes the one dollar here involved as a dock rate and not an allowance.

Protestant's witness Paul R. Hadley, Supervisor of Cost Studies, Research and Economics, attempts through his Exhibit No. PRH-1 to improperly apply motor carrier costing techniques to freight forwarder operations. Certainly protestant is aware that pick up costs for the account of freight forwarders are predicated on the freight forwarders' ability to negotiate a reasonable level of rates with local cartage carriers operating within prescribed exempt zones and with other regulated motor carriers operating outside exempt zones. The cost for pick up is a specific contractual arrangement between the forwarder and the motor carrier. Therefore, protestant's Exhibit No. PRH-1 has no relevancy in this proceeding.

TNT averred in its opening statement that freight forwarder pick up 101a
costs, not only within terminal areas but outside of same, have been sky-rocketing. The Commission's attention is respectfully directed to the Freight Forwarders initial statement filed in connection with Ex Parte proceeding No. 296, PROCEDURES FOR PARTIAL RECOUPMENT OF INCREASED CARRIER LABOR COSTS. This statement was filed on October 3, 1973 on behalf of respondent freight forwarders to that proceeding. Participant freight forwarders in TNT's tariff here at issue were included as respondents in that proceeding. Further attention is directed to Exhibit No. 7 of the same pleading which details specific freight forwarder pick up costs and it is clearly indicated therein for the account of TNT's participants here involved, that their pick up costs are in fact skyrocketing and in most cases the cost per hundred weight far exceeds the one dollar reduction here involved. In addition to the rising cost portrayal covering pick up and delivery detailed in Ex Parte 296, the current energy crisis further compounds the problem as all modes of transportation are facing continued rising costs.

Protestant in its argument confirms TNT's statement that the dock rate method of publication is a well established practice. Based on protestant's awareness and acceptance of this fact it is difficult for TNT to understand the opposition to the instant publication. TNT made an exhaustive and tiring search of protestant's tariffs and could not find one instance where the alleged competitiveness of this rate publication caused an actual publication. Protestant merely indicates through its argument that TNT has published matter which will affect Lifschultz Fast Freight, Inc., a regulated freight forwarder, who has merely attempted to meet its freight forwarder competition.

If TNT's participants are not permitted to offset rising pick up and other costs by rate innovations such as the dock rates here at issue, it is clearly evident that higher rate levels would have to be considered

which in effect would cause a deterioration in freight forwarder service in various areas of the country due to shippers and receivers using motor carrier service at a lower cost. Such deterioration of service would work to the detriment of all shippers and receivers whom the freight forwarders have served for many, many years and would artificially allocate all such traffic to the motor carrier industry which would be contrary to the Congressional tenets of the National Transportation Policy.

WHEREFORE, respondent prays that the Commission, in weighing all facts and argument in the instant proceeding, will find protestant's allegations totally without merit by summarily dismissing the instant proceeding and allowing continued effectiveness of the tariff matter here involved.

Respectfully submitted,

TNT TARIFF AGENTS, INC.

F. H. Zentner
Vice President
201 Eleventh Avenue
New York, N. Y. 10001

Dated: December 28, 1973

Due: January 2, 1974

FHZ/cj

VERIFICATION

State of New York)
New York County) SS:

F. H. Zentner, being duly sworn, deposes and says that he has prepared the foregoing statement and knows the contents thereof and that the same are true as stated.

F. H. Zentner

Subscribed in my presence and sworn to before me the twenty eighth day of December, 1973.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing first class, postage prepaid, a copy thereof properly addressed to each such party.

Dated at New York, N.Y., this twenty eighth day of December, 1973.

F. H. Zentner

AB

INTERSTATE COMMERCE COMMISSION INITIAL DECISION DATED MARCH 7, 1974 AND CERTIFICATE OF SERVICE

I & S No. 8894, et al

Service Date
March 22, 1974

Interstate Commerce Commission

Certificate of Service

The SECRETARY of the Interstate Commerce Commission hereby certifies that the attached initial decision of the Administrative Law Judge has been filed with and duly made part of the record herein and has this date been served upon all known parties in the manner provided by law and the regulations of this Commission.

Exceptions to said decision, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION, Washington, D.C. 20423, and served on all other parties of record within 30 calendar days (20 days if there are no other parties) from the date of service shown above. Replies thereto may be filed within 20 calendar days after the final date for filing exceptions. If either date falls upon a Saturday, Sunday, or legal holiday, then the applicable pleading must be filed by the end of the next business day.

If no exceptions are filed to the initial decision, and it is not stayed by the Commission, the initial decision becomes the order of the Commission by operation of law upon expiration of the period for filing of exceptions. The parties to this proceeding are warned that it should not be assumed that the initial decision has become effective as the order of the Commission by operation of law until a notice to that effect has been received.

In addition, any new operation to be authorized by the initial decision, if it becomes the order of the Commission by operation of law, may not be commenced until a certificate, permit, or license, as the case may be, has actually been issued by the Commission. A certificate, permit, or license will not be issued until the applicant has complied with the provisions of the Interstate Commerce Act and the requirements of the Commission thereunder as specifically set forth in the initial decision.

Robert Oswald

ROBERT L. OSWALD
Secretary

(SEAL)

INTERSTATE COMMERCE COMMISSION

INITIAL DECISION

INVESTIGATION AND SUSPENSION DOCKET NO. 8894[1/]
ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

In I and S Docket No. 8894, proposed allowance resulting in rate reduction, for delivery of shipments to freight forwarder's facilities, in lieu of forwarder provided pickup, found not shown to be just and reasonable. Schedules ordered cancelled and proceeding discontinued.

In Docket No. 35921, assailed allowance resulting in rate reduction, for delivery of shipments to freight forwarders' facilities, in lieu of forwarder provided pickup, found not shown to be just and reasonable. Schedules ordered cancelled and proceeding discontinued.

H. L. Rosenthal for respondent in I and S Docket No. 8894.
F. H. Zentner for respondent in Docket No. 35921.
John I. Mayfield, Jr. for protestant in both proceedings.

By Morton B. Margulies, Administrative Law Judge:

By schedules filed to become effective on October 25, 1973, Lifschultz Fast Freight, Inc., hereinafter called Lifschultz, a freight forwarder, proposes a reduction of $1.00 per 100 pounds from its rates, on shipments delivered to it at its forwarder facilities, which otherwise would have been afforded a forwarder pickup service.

The Commission on October 19, 1973, upon the protest of Eastern Central Motor Carriers Association, Inc. ordered an investigation and suspended operation of the schedules to and including May 24, 1974. A petition for reconsideration by Lifschultz, requesting that the order of suspension be vacated, was denied on November 26, 1973.

1/ This decision also embraces Docket No. 35921, Allowance For Delivery of Shipments To Forwarder Facilities.

At the time of ordering the aforementioned investigation and suspension, the Commission on its own motion in Docket No. 35921 instituted an ancillary investigation into the lawfulness of a comparable allowance resulting in a rate reduction, provided for in the tariffs of TNT Tariff Agents, Inc., Agent, which were published effective September 10, 1973 in behalf of freight forwarders, A.B.C. Freight Forwarding Corporation, Midland Forwarding Corporation and National Carloading Corporation. Eastern Central Motor Carriers Association, Inc. also appears in that proceeding as a party protestant.

The proceedings were assigned for handling under the modified procedure and referred to the Administrative Law Judge for initial decision. There are issues common to both proceedings, which best makes for the issuance of a single decision.

I and S Docket No. 8894

The proposed Lifschultz rule to establish an allowance of $1.00 per 100 pounds, minimum $1.00 for shipments tendered to the freight forwarder at its facilities for which the forwarder would otherwise have provided a pickup service is as follows:

Shipments Delivered To Forwarder

> Rates, charges and provisions which do not include pickup service will apply only when shipments are delivered directly to forwarder's facility. Shipments which are delivered to forwarder's agents will not be considered to be delivered to forwarder and will not be subject to rates, charges and other provisions which do not include pickup service.
>
> Except as otherwise provided, where tariffs making reference to this tariff do not provide rates applicable when no pickup service is afforded on less than trailer volume shipments (Item 50, (a) herein), and shipments are tendered to the forwarder at his facility without expense to the forwarder, the rate published to include pickup service less one dollar per 100 pounds, minimum one dollar, will be the rate applicable to the shipment.
>
> (F) Issued to meet freight forwarder competition. (TNT IC15 80040)

The rate reduction from the allowance would generally apply to class rated shipments, under rates subject to minimum weights less than 10,000 pounds, moving between Illinois, Indiana, Iowa and Wisconsin, on the one hand, and, on the other, 12 Middle Atlantic and New England States.

Lifschultz presently provides an allowance to shippers generally of 5 cents per 100 pounds, where its rates include free forwarder provided pickup and the shippers perform such service. The rule is as follows:

Allowance In Lieu Of Delivery Or Pickup

> Where rates include free pickup or free delivery service and shippers or consignees perform such service at their own expense, forwarder will grant an allowance in lieu of free pickup or free delivery of 5 cents per 100 pounds, except where the said service is performed at Milwaukee, Wis., at which point each of such services will be subject to an allowance of 20 cents per 100 pounds. Claim for allowance must be presented by the party entitled to receive it within 60 days from the date of the service for which the allowance is claimed was performed or may be taken on the freight bill covering.

Respondents primary justification for the proposal is as stated in the subject rule, "to meet freight forwarder competition". Lifschultz states that its freight forwarder competition, A.B.C. Freight Forwarding Corporation, Midland Forwarding Corporation and National Carloading Corporation already provide such an allowance and reduction in rates as that proposed and as a result have diverted traffic from it and will divert more unless respondent can meet the competition by providing a similar allowance which reduces its rates. It fears for its ability to provide service in the face of substantial diversions of its traffic and for its solvency.

Lifschultz never establishes by competent, probative evidence of record that the proposed allowance with a concomitant rate reduction is just and reasonable. It alleges but never proves that in the main its cost for performing the pickup service exceeds $1.00 per 100 pounds. To substantiate its assertion, the forwarder submitted as an exhibit "the result of a 1 percent sampling of rates paid to our pickup carriers who maintain section 409 contracts with this forwarder". The exhibit listed the rates per hundred weight, ranging from 90 to 385 cents, for the transportation of shipments by carriers under section 409 contracts, from and to points in 25 areas, some of which were within and others without the geographical area where the proposed rule would apply. The rates shown include the performance of line haul transportation, for example the transportation of shipments from Chicago to Rock Island, Ill. No showing was made of any quantities of traffic it had moved under such rates or at the local cartage rates it states it obtains from carriers for performing transportation in its

terminal cities. It showed the cartage rates to be for the cities named, per hundred weight: Chicago, 67½ cents: Baltimore, 78 cents; Boston, 65 cents; Boston (Cambridge) 85 cents; Milwaukee 58 cents; Philadelphia, 69 cents; Providence, 65 cents; and New York, 90 and 88 cents. Without substantiation, it asserts the cost to shippers, who must pay the carriers' public charges, the cost is 30 percent higher or more.

Except to the extent respondent offered that the reduced rates resulting from the proposal on class 50 shipments of 500 and 1,000 pounds, moving from Chicago to Baltimore, Md. or New York, N. Y. by Plan 2½ piggyback, on average loadings of 20,000 pounds, would exceed the line haul costs, no attempt was made to show that the reduced rates resulting from the change would be compensatory.

Eastern Central Motor Carriers Association, Inc. submits that the pickup allowance for its member carriers is 8 cents per 100 pounds, except for named carriers at Cleveland, Ohio, Detroit, Mich. and St. Louis, Mo. where it is 15 cents per 100 pounds and that for freight forwarders other than those who are under investigation in Docket No. 35921, it is 5 cents per 100 pounds except at some 7 points in Illinois, Iowa, Minnesota and Ohio, where the pickup allowance ranges between 10 and 12 cents per 100 pounds. It asserts that the Lifschultz proposed allowance is exorbitant, disruptive in character and will exert a destructive impact on the existing rate structures. It further asserts respondent has not shown that the proposed allowance is just and reasonable for the service or instrumentally furnished and therefore it has failed to sustain its burden of proof for establishing the lawfulness of the proposal, in accordance with statute and Commission cases.

Docket No. 35921

Item 619, of TNT Tariff Agents, Inc., Agent, Tariff No. 14, I.C.C.-F.F. No. 15, being investigated by the Commission in Docket No. 35921 is as follows:

Shipments Delivered To Forwarder

> Rates, charges and provisions which do not include pickup service will apply only when shipments are delivered directly to Forwarder's facility. Shipments which are delivered to Forwarder's Agents will not be considered to be delivered to the Forwarder and will not be subject to rates, charges and other provisions which do not include pickup service.

> Except as otherwise provided, where tariffs making reference to this tariff do not provide LTL rates applicable when no pickup service is afforded, the rates in the applicable tariffs making reference to this tariff will be subject to the provisions of Column D of Note 1 or in the absence of specific provisions or Column D the rates will apply less one dollar per hundred pounds. Where provisions are made in tariffs making reference hereto for rates which do not include pickup service, such rates will not apply except at New York, N. Y. on shipments under 500 pounds they will apply, and in lieu thereof the rates which do include pickup service will apply and be subject to Column D of Note 1 herein or in the absence of specific provisions or Column D, the rates which include pickup service less one dollar per hundred points will apply.

Item 80040 of the same tariff, being similarly investigated, is identical to Item 619 except in the second paragraph the abreviation LTL is omitted.

The rules in the agency tariff have the effect of reducing by $1.00 per 100 pounds published full service rates, that is rates under which the freight forwarders are obligated to provide a pickup service, when shipments are delivered to the freight forwarders at their facilities, in lieu of the freight forwarder provided service. The $1.00 per 100 pounds reduction is accomplished through the application of a conversion table (Column D of Note 1) or by applying the reduction directly to existing rates which provide for a forwarder pickup. The $1.00 per 100 pound reduction in rates which provide for a forwarder pickup is applied uniformly to all shipments tendered, regardless as to the location of terminals or the size of shipments.

The rules under investigation became effective September 10, 1973. Freight Forwarders, A.B.C. Freight Forwarding Corporation, Midland Forwarding Corporation and National Carloading Corporation participate in the agency tariff. A.B.C. Freight Forwarding Corporation and Midland Forwarding Corporation had initially published similar rules providing for a $1.00 per 100 pound rate reduction, in individual tariffs made effective July 31, 1972.

TNT Tariff Agents, Inc., hereinafter called TNT, in addition to publishing the rules under investigation, under Item 660 publishes a rule for "Allowance In Lieu Of Pickup And Delivery At Terminal Points". It provides for a cartage allowance of 10 cents per 100 pounds to apply at all points in lieu of a forwarder pickup service,

except at Milwaukee, Wis. where the allowance is 20 cents per 100 pounds and at Louisville, Ky. where it is 15 cents per 100 pounds, subject to a maximum allowance of $7.50. Rule 670 of the TNT tariff further provides that the allowance in lieu of pickup service as provided in Item 660 will be payable only to a consignor upon presentation of an itemized written statement, submitted within a specified time limit.

TNT characterizes the reduced rates that result from the application of Items 619 and 80040 to its published scale of rates which provide for a forwarder pickup, as its "dock rates". Because it also terms as "dock rates" the rates applicable from the forwarders' terminals or receiving stations, which as published never provided for a forwarder pickup service, the rates resulting from the application of Items 619 and 80040 will be referred to henceforth as reduced service rates.

TNT distinquishes its Items 619 and 80040, "Shipments Delivered To Forwarder" from its allowance in lieu of pickup, in that the latter is only made available to shippers located within a terminal area or commercial zone and requires that the shippers submit statements periodically to claim the allowance, while the application of Items 619 and 80040 require none of the foregoing and the resulting reduced rates are made available to whoever pays the freight bills.

TNT by inference equates the reduced service rates with dock rates. It asserts forwarders have historically published dock rates and that under some of the dock rates it presently publishes, when compared with rates that provide for a forwarder furnished pickup, the difference exceeds $1.00 to 100 pounds. To establish this point it compares commodity dock rates to class rates that provide for a forwarder pickup. In some examples, the class rate that provides for a forwarder pickup, exceeds the commodity dock rate by more than $1.00 per 100 pounds.

TNT further asserts without substantiating data, costs to freight forwarders for providing pickup service both within and without terminal areas are "skyrocketing" and that they have been unable to recoup such costs through general increases. It believes an innovative method of publishing rates is vital to the survival of forwarders and that the items under investigation have had the effect of stabilizing the forwarders' cost of doing business for the particular segment of the transportation involved.

It additionally submits that shipments delivered to the forwarder facilities by shippers are received throughout the day which make the shipments immediately available for further movement, whereas shipments picked up by the forwarders usually arrive at their terminals at the close of the business day and must await the next day for movement. It further states with forwarder provided pickups, shipments have to be physically checked at the shippers' platforms and again at the forwarders' facilities, whereas shipper delivered shipments only need be checked at the forwarders' facilities.

TNT asserts that the provisions under investigation have in no way affected the traffic of motor carriers or their profit-making capability.

Letters from 30 shippers supporting TNT and its continued maintenance of Items 619 and 80040 were attached to respondent's opening statement. The letters offered no information as to the shippers' cost for delivering shipments to the forwarders' facilities.

Protestant's position is that the assailed allowance is exorbitant, disruptive in character and will exert a destructive impact on the existing rate structure. Eastern Central Motor Carriers Association, Inc. points to the diversion of traffic alleged by Lifschultz and the steps it is taking to meet the competition. The Association objects to the allowance because of its severity and its all encompassing nature.

Protestant submitted that: aside from that assailed, TNT's tariffs provide for a pickup allowance of 10 cents per 100 pounds except at Louisville, Ky. and Milwaukee, Wis., where they are 15 and 20 cents per 100 pounds, respectively; protestants' members' allowance is 8 cents per 100 pounds, except at Cleveland, Ohio, Detroit, Mich. and St. Louis, Mo. where it is 15 cents per 100 pounds for named carriers and for other forwarders they range from 5 to 20 cents per 100 pounds.

Eastern Central Motor Carriers Association, Inc. submitted figures to show that the fully allocated costs to its member carriers to perform pickup service exceeds $1.00 per 100 pounds for shipments of 400 pounds and under but the cost falls below that on shipments of 500 pounds and above. It set forth similar type figures for three other motor carrier tariff bureaus operating within the same area as the forwarders, which showed the fully allocated costs for pickup for their members to exceed $1.00 per 100 pounds at 300 pounds but to drop below that at shipments of 400 pounds and above.

Protestant considers TNT's comparison of commodity dock rates with class rates that provide for forwarder pickup, to show rate differences of more than $1.00 per 100 pounds to be pointless. It asserts that commodity dock rates are established because of competitive factors or special mitigating circumstances, while class rates are generally considered to be at the maximum rate level, thus providing no basis for concluding that the sole grounds for the difference in the rates is for the pickup service furnished.

Eastern Central Motor Carriers Association, Inc. submitted an exhibit, attached as an appendix, showing class rates presently published by TNT for transportation from New York, N. Y. to Chicago, Ill. They include class rates that provide for forwarder pickup, its dock rates and the reduced service rates that result from application of the assailed items. A comparison of the rates illustrates that TNT provides a discount in its class rate structure for shipments tendered to the forwarders at their facilities (dock rates) and that the assailed allowance provides an even greater discount.

Protestant contends as in I and S Docket No. 8894 that respondent has not established the allowance is just and reasonable, that is it is no more than the costs experienced in normally providing the service or instrumentality of transportation and that such allowance will not exceed the cost to the shipper or receivers for performing the function. It requests Items 619 and 80040 be cancelled and the proceeding be discontinued.

DISCUSSION AND CONCLUSIONS

It is immaterial whether the assailed provisions in both proceedings are considered as creating allowances or rate reductions because as either they have not been shown to be justified.

An allowance of any type can be no more than is just and reasonable. If it is more than just and reasonable, it constitutes a device for refunding, or remitting a portion of a freight forwarder's rates or charges, which rebating is outlawed by section 404(c) of Part IV of the Interstate Commerce Act. To be just and reasonable, an allowance resulting from delivery of a shipment by a party to a forwarder's facility, in lieu of using the available pickup service of the forwarder, must be commensurate with the facilities furnished and the service performed. It should not exceed the cost to the forwarder or the shipper for providing the service. See: Freight Forwarder Allowances At Baltimore, Md., 315 I.C.C. 719, 721. Compare: Pickup And Delivery Allowance, St. Louis and Kansas City, 64 M.C.C. 163, 166.

Likewise reduced rates must be just and reasonable to be lawful. To established as reasonable, they must be compensatory for the service performed thereunder. Freight Forwarder Allowances At Baltimore, Md., supra.

Although Lifschultz claims its costs for delivering shipments to its facilities, as well as for shippers to have the service performed, exceeds $1.00 per 100 pounds, it never established such costs by convincing, probative evidence of record. Under the proposal, the $1.00 per 100 pounds would be offered by respondent for the delivery of freight at most of its terminals, on shipments of varying weights, subject to minimum weight levels of less than 10,000 pounds. The data furnished by Lifschultz did not establish what its costs are for delivering shipments at its facilities and for the weights involved. The section 409 contract rates, which cover the performance of line haul transportation and the local cartage rates submitted, varied from under $1.00 per 100 pounds to more than $1.00. The rates were never related to any service actually performed for Lifschultz therefore its delivery costs were never established. To merely further assert, without supporting evidence, that a shipper's cost for delivery is 30 percent higher or more than respondent's costs, which themselves were never satisfactorily established, provides no basis for determining whether the $1.00 per 100 pounds is commensurate with shippers' costs. Because Lifschultz failed to relate the $1.00 per 100 pounds to its own or shippers' delivery costs, the proposal as an allowance was not established as just and reasonable.

Lifschultz has also failed to establish the reduced rates, that result from the proposed schedule, are just and reasonable, in that it never proved them to be compensatory for the service offered. To establish that the resulting reduced rates exceed the cost for line haul transportation in a highly isolated instance, as Lifschultz did, where the rate reductions occur in such a broad area, provides no basis for determining that the reduced rates would be compensatory. It made no attempt to establish that the resulting reduced rates overall would be compensatory.

Lifschultz has failed to justify the proposal as being just and reasonable, therefore its concellation is required. Its justification for the proposed schedule on the basis of competitive necessity provides no reason for altering this conclusion. The comparable provisions in the TNT tariff likewise have not been shown to be just and reasonable and they too will be ordered cancelled, rendering Lifschultz argument of competitive necessity moot.

Eastern Central Motor Carriers Association, Inc. made out a prima facie case that granting $1.00 per 100 pounds for delivery of shipments to a forwarder's facilities, in lieu of a forwarder provided service, pursuant to Items 619 and 80040 of the TNT tariff, is unjust and unreasonable.

Application of the Items provide a means for the widespread defeat of TNT's published rates. Under the subject rules a shipper need only deliver its shipments to a forwarder's facilities, an act for which it would have received an allowance of 10 cents per 100 pounds under TNT's more restrictive, Allowance In Lieu Of Pickup At Terminal rule, and it now receives an allowance 10 times greater than previously

paid. The subject rules make the much enlarged allowance available to parties other than the shipper, under conditions that are less stringent and onerous than the rule under which forwarders paid one tenth of the amount for delivery of shipments to their facilities. The amount of the allowance is sufficiently large, that the reduced rates resulting from the application of the rules are even less than the forwarders' class dock rates, which assume the delivery of shipments to forwarders' facilities.

Clearly such a disruption of the rate structure, accomplished without any change in the service performed of delivering shipments to the forwarders' facilities in lieu of a forwarder provided service, requires TNT to go forward and show the justness and reasonableness of the Items. This it has failed to do.

TNT did not establish by evidence of record that the $1.00 per 100 pounds provided for in the Items is commensurate with the forwarders' or shippers' costs for performing delivery or that the resulting reduced rates are compensatory. To state that costs are "skyrocketing" does not establish the level of the costs, so that a comparison can be made between them and the allowance. A difference in some instances, of more than $1.00 per 100 pounds between commodity dock rates and class rates, that include a forwarder pickup service, provides no basis for concluding the $1.00 per 100 pounds provided for in Items 619 and 80040, which have broad application, are commensurate with delivery costs or that the reduced rates resulting from application of the Items are compensatory. TNT has not met the prima facie case of protestant which showed the Items to be unjust and unreasonable. The Items must therefore be cancelled. The convenience resulting from a shipper providing the delivery service, in lieu of a forwarder and the letters of support of the shippers provide no legal reason for altering the conclusion.

Unjust and unreasonable rates and practices can result, contrary to the National Transportation Policy, in unfair and disruptive competitive practices, not only among carriers within the same mode of transportation, but with carriers in other modes as well. The impact of the subject Items, which are not shown to be just and reasonable, can be seen on Lifschultz, a competing freight forwarder, who in turn has attempted to publish a similar item that results in rate cutting and which it did not justify.

The decision herein should not be viewed as discouraging innovative rate making. Whether rate making be innovative or accomplished through established methods, the resulting rates by statute must be just and reasonable.

Environmental factors are not germane to the issue.

FINDINGS AND ORDER

The Administrative Law Judge finds: That in I and S Docket No. 8894, the proposed schedules have not been shown to be just and reasonable and should be ordered cancelled; That in Docket No. 35921, the assailed Items have not been shown to be just and reasonable and should be ordered cancelled; and

That this decision as it relates to I and S Docket No. 8894 and Docket No. 35921 is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

It is the ORDER of the Administrative Law Judge that:

In I and S Docket No. 8894, the proposed schedules be cancelled and the proceeding discontinued;

In Docket No. 35921, the assailed Items be cancelled and the proceeding discontinued; and

It is further ordered, That in the absence of a stay or postponement by the Commission, or the timely filing of exceptions, the effective date of this order shall be 30 days from the date of service hereof.

Dated at Washington, D. C., this 7th day of March, 1974.

By the Commission, Morton B. Margulies, Administrative Law Judge.

ROBERT L. OSWALD

(SEAL) Secretary

APPENDIX

STATEMENT
PROVIDING A COMPARISON OF RESPONDENT'S PRESENT CLASS RATES FROM NEW YORK, NEW YORK TO CHICAGO, ILLINOIS ILLUSTRATING THE DIFFERENCE BETWEEN THE FULL SERVICE RATE; THE PUBLISHED DOCK RATE; AND THE DOCK RATE RESULTING FROM THE ASSAILED ALLOWANCE.

	CLASSES														
MINIMUM WEIGHT	100			92½			85			77½			70		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
500 Pounds	910	880	810	847	813	747	780	747	680	713	685	613	650	623	550
1,000 Pounds	781	759	681	731	701	631	671	645	571	615	591	515	560	532	460
2,000 Pounds	725	701	625	673	648	573	619	596	519	568	546	468	522	495	422
5,000 Pounds	614	591	514	566	546	466	514	496	414	474	451	374	429	408	329

Rates in cents per hundred pounds.

EXPLANATION OF REFERENCE MARKS:

(1) - Full Service rates per Section 5.1 of the TNT Tariff Agents, Inc., Tariff 3, I.C.C.-F.F. 4. Rates include pick-up service.

(2) - Dock rates per Section 6, Supplement 1 to the TNT Tariff Agents, Inc., Tariff 3, I.C.C.-F.F. 4. Rates apply only on shipments delivered to forwarder's terminal.

(3) - Dock rates when assailed rule has been applied. Rate has been determined by reducing the (1) full service rate by one dollar ($1.00).

EXCEPTIONS BY TNT TARIFF AGENTS TO INITIAL DECISION OF ADMINISTRATIVE JUDGE

Before The

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 35921

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

RESPONDENT'S EXCEPTIONS

TO THE INITIAL DECISION OF THE

ADMINISTRATIVE LAW JUDGE

Dated: April 18, 1974

Due: April 22, 1974

Respondent:

TNT Tariff Agents, Inc., Agent
201 Eleventh Avenue
New York, New York 10001

By:
F. H. Zentner
Vice President

The matter at issue herein will not affect the quality of the human environment.

RESPONDENT'S EXCEPTIONS

TO THE INITIAL DECISION OF THE

ADMINISTRATIVE LAW JUDGE

Comes now TNT Tariff Agents, Inc., Agent, hereinafter also referred to as TNT, respondent in the above-styled proceeding, and respectfully submits its exceptions to the initial decision of Administrative Law Judge Morton B. Margulies served March 22, 1974. (References hereinafter to pages will be to pages of the Initial Decision except as otherwise specified).

(1) The Judge erred in his summation by stating that there was no substantiating data for TNT's statement that freight forwarders' pickup costs are "skyrocketing". (Page 6)

Respondent's expert witness at page 4 of respondent's opening statement of facts and argument referred to Advance Statements of Justification submitted to the Commission in connection with recent general increases. Also, in respondent's reply statement reference was made at page 2 to Ex Parte No. 296, PROCEDURES FOR PARTIAL RECOUPMENT OF INCREASED CARRIER LABOR COSTS (Exhibit No. 7 therein). These are documents in the Commission's files and the cost evidence outlined therein is a matter of public record. Additionally, respondent's participants have hundreds of Section 409 contracts on file with the Commission and an examination of these would disclose that very few of them have not been increased substantially at least once during the past year. Furthermore, to deny the existence of an energy crisis which has resulted in cartage and Section 409 rates being further increased by 6% (Emergency Fuel Surcharge) is to take at the very least, an ivory tower if not an ostrich-like approach to this whole question of "skyrocketing" pickup costs.

(2) The Judge erred in concluding that the assailed provisions have not been shown to be justified. (Page 8)

The Administrative Law Judge rationalizes that, "It is immaterial whether the assailed provisions in both proceedings are considered as creating allowances or rate reductions because as either they have not been shown to be justified". The Judge expounds further stating that an allowance of any type can be no more than is just and reasonable, citing various cases pertaining to allowances, and goes on to say that likewise, reduced rates must be just and reasonable to be lawful. Here again the Judge cites a previous case dealing with Freight Forwarder allowances.

Respondent can not stress too strongly that the dock rates here involved are not allowances in any form. It is apparent that the entire negative decision reached by the Judge was prompted solely on the fact that in his opinion respondent is offering allowances in lieu of pick up. Respondent has conclusively shown: 1) that motor carrier costs have no relation to freight forwarder costs and, 2) that the dock rates which are $1.00 less than rates including pick up do nothing more than offset a portion of forwarders' pick up costs which have been clearly shown to be in excess of $1.00.

Furthermore, the instant proceeding is not an investigation and suspension docket. It is strictly an investigation proceeding involving tariff matter which has been effective for quite some time. Consequently, the burden of proof is not upon respondent to show that the assailed matter is justified. Rather it is upon the protestant to prove that the proposed dock rates are unjust and unreasonable. With all due respect to the Administrative Law Judge, there has been no conclusive showing by protestant that such is the case.

(3) The Judge erred in concluding that Eastern Central Motor Carriers Association, Inc., made out a prima facie case that the assailed dock rates are unjust and unreasonable. (Page 9)

In arriving at his conclusion the Judge apparently relied heavily upon protestant's use of motor carrier cost figures. This is like comparing apples with oranges. There is no similarity between motor carrier costs and freight forwarder costs. Freight forwarders may use their own pickup equipment only within prescribed Commercial Zones and must contract with Part II carriers for pick up service outside such Commercial Zones. Motor carriers are not so bound. Congress had this and other differences between motor carriers and freight forwarders in mind when it enacted Section 406 (d) which reads in part as follows:

> "In the exercise of its power to prescribe just and reasonable rates and charges of freight forwarders, and classifications, regulations, and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent nature of freight forwarding....." (Emphasis supplied).

Additionally, Congress, again recognizing the difference between the various modes of transportation, enacted Section 15a (3):

> "In a proceeding involving competition between carriers of different modes of transportation subject to this Act, the Commission, in determining whether a rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable. Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this Act." (Emphasis supplied).

By relying on motor carrier costs in concluding that protestant made out a prima facie case that the assailed dock rates are unjust and unreasonable, the Judge has apparently chosen to ignore the above-quoted sections of the Act.

Even if motor carrier costs were acceptable evidence in judging a freight forwarder rate case, which respondent respectfully submits they are not, how can the Judge deny the fact that such costs exceed the rate reductions on shipments of 400 pounds and less. This being so, then at the very least he should have found that protestant did not make out a prima facie case for this segment of traffic.

(4) The Judge erred in concluding that the size of the "allowance" results in disruption of the rate structure. (Pages 9 and 10)

The size of the "allowance" (or rather reduction) is not in itself incontrovertible evidence that it is unjust and unreasonable. The published allowances of 10 cents, 15 cents and 20 cents per cwt. in lieu of pickup which are in effect for both protestant and respondent are just so much window dressing. Possibly ten or fifteen years ago they may have partially served the purpose for which they were intended. That is, to encourage shippers to deliver their freight to a forwarder's dock, thus saving the forwarder the cost of picking up. Today, however, these piddling amounts certainly do not serve as such an incentive. The proof of this is the fact that over the past few years respondent's participating forwarders have paid a 5 cent or 10 cent allowance to no more than two or three accounts and never on a regular basis. The Judge has let the amount of the reduction, $1.00 per cwt., sway him in arriving at his conclusion. The $1.00 per cwt. reduction is less than respondent's forwarders' cost for providing the service and there has been no showing, nor is there any reason to believe, that it would cost shippers less than $1.00 per cwt. to render this service on their own.

With respect to the rate structure, this is a much over used and misinterpreted term. The rate structure is purely and simply what competitive and economic factors dictate at the moment. Except for some minor variations, respondent's rate structure at this very moment exceeds Eastern Central's by 3.9% on shipments of less than 1,000 lbs. and by 1.9% on shipments of 1,000 lbs. and over. Next month

the whole thing could turn around and Eastern Central could he higher. There is nothing static about a rate structure. It does vary between different modes of transportation. The Judge has failed to take this fact into account and seeks to cloak it in a mantle of sanctity.

(5) The Judge erred in calling for complete cancellation of Items 619 and 80040. (Page 10)

Assuming for the moment that Eastern Central did make out a prima facie case for the territory in which it is involved, by what logic does the Judge extend this beyond Eastern Central Territory. Item 80040 applies from the East and Midwest to Florida and Louisiana. These are movements in which Eastern Central has no competitive interest. It is noteworthy that Southern Motor Carriers Rate Conference and Central and Southern Motor Freight Tariff Association, Incorporated submitted no protests or complaints with respect to these dock rates. Item 619 touches on Eastern Central Territory but also goes beyond it. It applies as well from the East to the South; from IFA to the Southwest; from IFA to the South; from Illinois and Missouri to New Orleans for export; between Illinois and Minnesota; between Trunk Line and New England and Colorado and Wyoming; within Middle Atlantic Territory; and several other moves. All these moves are not served by Eastern Central and they certainly have no competitive interest in them. Here again no protests or complaints were filed by the involved motor carrier rate bureaus. The Judge went far astray from the evidence of record in calling for a wholesale cancellation of these items.

PRAYER

WHEREFORE, Respondent respectfully prays that the Commission take note of the exceptions outlined above and find the matter in Docket No. 35921 not found to be unjust and unreasonable and permit it to remain in effect and that the Commission order the proceeding discontinued.

Respectfully submitted,

TNT TARIFF AGENTS, INC., AGENT

F. H. Zentner
Vice President

Due Date: April 22, 1974

VERIFICATION

State of New York)
New York County) SS:

F. H. Zentner, being duly sworn, deposes and says that he has prepared the foregoing statement and knows the contents thereof and that the same are true as stated.

F. H. Zentner

Subscribed in my presence and sworn to before me the eighteenth day of April, 1974.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing first class, postage prepaid, a copy thereof properly addressed to each such party.

Dated at New York, N. Y., this eighteenth day of April, 1974.

F. H. Zentner

REPLY BY EASTERN CENTRAL MOTOR CARRIERS TO EXCEPTIONS
FILED BY TNT TARIFF AGENTS
Before the

INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 8894 &
INVESTIGATION DOCKET NO. 35921

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

REPLY TO

RESPONDENTS' EXCEPTIONS TO THE INITIAL DECISION

OF THE ADMINISTRATIVE LAW JUDGE

THE EASTERN CENTRAL MOTOR CARRIERS
ASSOCIATION, INC.

PROTESTANT

John I. Mayfield, Jr.
Registered Practitioner

FOR PROTESTANT

2545 Bailey Road
Cuyahoga Falls, Ohio
Mail Address: P. O. Box 3600
Akron, Ohio 44310

Dated: May 10, 1974
Due: May 13, 1974

Before the

INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 8894 & INVESTIGATION DOCKET NO. 35921

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

REPLY TO

RESPONDENTS' EXCEPTIONS TO THE INITIAL DECISION

OF THE ADMINISTRATIVE LAW JUDGE

Comes now The Eastern Central Motor Carriers Association, Inc., protestant in the above-entitled cases, and respectfully submits its reply to the respondents' exceptions to the initial decision of the Administrative Law Judge, served March 22, 1974.

PRELIMINARY STATEMENT

Under the date of October 11, 1973, this Association protested and requested suspension of Item 93 on 8th Revised Page 12 to Lifschultz Fast Freight, Inc., Tariff No. 12-B, ICC-FF No. 8 (Lifschultz), scheduled to become effective on October 25, 1973, and requested that an investigation be instituted against Items 619 and 80040 of TNT Tariff Agents, Inc., Agent Tariff No. 14, ICC-FF No. 15. The assailed matters involved allowances of one dollar ($1.00) per hundred pounds on less than trailer volume shipments (Lifschultz) or LTL shipments (TNT) that have been transferred to the freight forwarder at its facility without expense to the forwarder.

After due consideration of protestant's petition for suspension and investigation and the reply for and on behalf of Lifschultz[1], the Suspension and Fourth Section Board, by its order dated October 24, 1973, concluded to place the Lifschultz proposal under suspension to and including May 24, 1974, in I. & S. Docket No. 8894, Allowance For Delivery Of Shipments To Forwarder Facilities; and the Commission, by its own motion, order dated October 24, 1973, instituted an investigation into the TNT proposals, matter in issue herein, under Docket No. 35921, Allowance For Delivery Of Shipments To Forwarder Facilities.

By orders dated October 24, 1973, the cases were assigned for handling under modified procedure with respondents' opening statements due November 13, 1973 and protestant's statements due thirty days thereafter.

In the initial decision, served March 22, 1974, an Administrative Law Judge ruled that the matter in issue was found not shown to be just and reasonable and ordered the schedules cancelled and the proceedings discontinued.

Protestant acknowledges receipt of Respondents' Exceptions to the Initial Decision of the Administrative Law Judge, Lifschultz's dated April 5, 1974 and TNT's dated April 18, 1974, requesting the Commission to find the proposed allowance to be found just and reasonable for Lifschultz and not found to be unjust and unreasonable for TNT.

Protestant respectfully submits, for reasons hereinafter stated, that the Administrative Law Judge did not err in his findings and that the initial decision should become the order of the Commission.

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[1] Lifschultz stated that its reply statement was not timely received.

ARGUMENT

I

Lifschultz's first exception is based on its opinion that the Judge overlooked its cost presentation and that it was not challenged. It should be noted that the Opening Statement submitted for Lifschultz consisted of a short statement of fact that refers to its Exhibit No. 1, a reproduction of its Reply to Protestant's Petitions for Suspension, and Exhibit No. 2, a reproduction of its Petition for Reconsideration and Vacation, and a short argument stressing the competitive necessity of the item and that the attached exhibits would sustain its burden. Therefore, its cost presentation is found on what should be considered as Pages 8, 9 and 10 of Exhibit No. 1. It contains references to Section 409 contracts, Pages 8 and 9, and some local cartage costs, Page 10, which were adequately challenged by protestant at Page 9 of its Statement Of Facts and Argument in I. & S. Docket No. 8894.

The Administrative Law Judge, at Pages 3 and 4 of the Initial Order, went into the evidentiary presentation of Lifschultz's and, at Page 9, pointed out its shortcomings; i.e. rates shown include the performance of line haul transportation and without substantiation, it asserts the costs to shippers who must pay the carriers' public charges, the cost is 30 percent higher or more. Except for this assertion, Lifschultz did not present any shipper costs.

On the subject of allowances for line haul service, Division 3 held, at Page 57, in Draymen's Association of San Francisco Et Al v. Merchants Express Corporation, 64 MCC 51:

"The areas from which these allowances may be applied are not described in the defendant's tariff; apparently the allowances as published are in the nature of line-haul rates governing by the classification and exceptions thereto. This Commission has consistently found that allowances may not be made to shippers for performing line-haul service, but only for terminal service which the carrier is obligated to furnish within the contemplation of the line-haul rates. To permit a station outside the limits of another to be included within the pickup area of the latter and provide for an allowance to the shipper in lieu of pickup service is to sanction an unlawful allowance for line-haul service. See Morgain Forwarding Co., Pick Up and Storage, 258 I.C.C. 771, 773."

And, on the subject of allowances, in Freight Forwarder Allowances At Baltimore, Md., 315 I.C.C. 713, the Rates and Practices Review Board held at Page 721:

"Section 415 of the act prohibits allowances to be paid by freight forwarders which are 'more than just and reasonable.' This requires some indication that the proposed allowance is not in excess of the average shipper's cost of performing these services. As stated, ABC claims that its cost of performing the pickup service ranges from 55 to 60 cents per 100 pounds, but this statement is not supported by any cost data; and no evidence was presented of the costs of shippers or cartage companies performing the service for shippers. Before we can approve an allowance to shippers for carrier service, we must know what the shippers' costs are for that service when performed by or for the shippers. In the absence of such a showing the evidence before us is inadequate to support a finding that the proposed allowance is no more than is just and reasonable. See Delivery Allowance in Central Territory, 309 I.C.C. 187, 188."

Protestant submits that the Administrative Law Judge correctly assessed Lifschultz's presentation and, therefore, did not err.

II

TNT's first exception contends that the Judge erred by stating that there was no substantiating data for TNT's statement that freight forwarders' pickup costs are "skyrocketing." It supports its contention on the fact that in its statement it made reference to "Advance Statements of Justification submitted to the Commission in connection with recent general increases;" also its reply statement to Ex Parte No. 296, Procedures For Partial Recoupment Of Increased Carrier Labor Costs; and its references to Section 409 rates and their Emergency Fuel Surcharges. A review of the statements submitted by TNT reveal that there is truly a lack of substantive evidence of its costs. The mere reference to proceedings without the presentation or the reproduction of the pertinent matter is violative of Rules 80 and 81 of the General Rules of Practice and can only be considered as argument.

Protestant submits that the Administrative Law Judge adequately covered TNT's presentation on Pages 6 and 7 of the Initial Order and, in light of past proceedings such as Drayman's Association of San Francisco Et Al v. Merchants Express Corporation, 64 MCC 51, and Freight Forwarders Allowances At Ba[illegible]e, Md., 315 ICC 719, came to the only logical conclusion, at Pages 9 and 10, and did not err.

III

Both respondents take exception to the Administrative Law Judge's finding that protestant made a prima facie case, Page 9 of Initial Order, Lifschultz's and TNT's third exceptions. It should be noted that the prima facie case referred to was relative to matter published by TNT, not Lifschultz. Lifschultz's stand is unfounded in that it was respondent in I. & S. Docket No. 8894, supra and the burden was upon respondent. The Judge's findings

in that case are presented in the first three paragraphs of Page 9 and they rightfully conclude that "Lifschultz has failed to justify the proposal as being just and reasonable." In regard to the position taken by TNT, it did not present any substantiating data and it did not rebut protestant's costs presentation with any acceptable evidence. Consequently, protestant did establish a prima facie case and the Judge did not err.

IV

TNT contends that the Administrative Law Judge erred in concluding that the allowance is disruptive of the rate structure (its Exception (4)). TNT has not supported its contention with any factual matter. The true facts are that TNT's assailed allowance will alter its own rate tables and that Lifschultz has already seen a need to attempt to adjust its rates through publication of a similar allowance to meet this competition. Pages 12 through 14 of protestant's Statement of Facts and Argument in Docket No. 35921 adequately illustrate the disruptive nature of respondent's proposal. Again the Judge did not err.

V

Lifschultz in its Exception (3) avers that the Judge erred in treating this matter as a proposal to establish reduced rates and TNT (Exception (2)) holds that its "dock rates" are not allowances. The Commission's attention is again directed to Freight Forwarders Allowances At Baltimore, Md., 315 ICC 719, involving a schedule filed by ABC Freight Forwarding Corporation proposing a general reduction of 35 cents in its rates on shipments which the shipper elects to deliver to the forwarders' receiving stations at Baltimore, Md., and a schedule filed by Lifschultz Fast Freight proposing to establish reductions in its class rates, applicable when the shippers perform the pickup. In essence, the rates in issue therein were "dock rates" and the amount of the reductions were considered as allowances.

The Rates and Practices Review Board ruled, at Page 721, the following:

> "Whether the proposals are regarded as reduced rates or as increased allowances to shippers, they have not been justified. In order to establish the reasonableness of proposed reduced rates it is incumbent upon the respondents to show that they would be compensatory for the service to be performed thereunder. The record is devoid of any evidence bearing on the compensatory character of the reduced rates."

In the present proceeding, the Judge, in view of the fact that the allowances in question were arrived at by reducing the rates by a certain amount, rightfully started his "Discussion And Conclusions" with a paraphrase of the above citation and periodically and appropriately cited that respondents failed to satisfy their requirements.

VI

In regard to Docket No. 35921, supra, respondent TNT did not have the burden to show the rates would be just and reasonable. TNT takes issue of this in the last paragraph of its Exception (2). The Commission is well aware that proceedings before it are of an adversary nature and that regardless of the burden of proof it is incumbent on each party to plead its case. As previously noted, respondents failed to provide any substantiating data or effective rebuttal;and protestant has presented a prima facie case in Docket No. 35921, supra.

VII

In its final exception (Exception (5)) TNT is of the opinion that the Judge erred in requesting the complete cancellation of its items. Protestant need only point to the fact that the Commission has the power on its own motion to order the cancellation of any rate, rule, regulation or practice that is found to be unlawful and that protestant has established a prima facie case that the assailed rules are shown to be unjust and unreasonable on shipments originating within the Central Region, Eastern

Central Territory, New England Region Group II, and Middle Atlantic Region.

WHEREFORE, in view of all the foregoing, protestant respectfully prays that the Commission will affirm the findings of the Administrative Law Judge and adopt them as their own.

Respectfully submitted,

THE EASTERN CENTRAL MOTOR CARRIERS ASSOCIATION, INC.

PROTESTANT

_____

John I. Mayfield, Jr.
Registered Practitioner

FOR PROTESTANT

2545 Bailey Road
Cuyahoga Falls, Ohio
Mail Address: P. O. Box 3600
Akron, Ohio 44310

Dated: May 10,1974
Due: May 13,1974

Files: C-6874; C-6876

JIM/cmb

CERTIFICATE OF SERVICE

I hereby certify that I have this day served upon all parties of record in this proceeding by mailing first class mail, postage prepaid, a copy thereof properly addressed to each such party.

Dated at Cuyahoga Falls, Ohio, this tenth day of May, 1974.

_____

John I. Mayfield, Jr.

DECISION AND ORDER OF INTERSTATE COMMERCE COMMISSION DATED JULY 12, 1974

Extension of time to file a reconsideration 30 days

SERVICE DATE JUL 23 1974

DECISION AND ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Review Board Number 4, held at its office in Washington, D.C., on the 12th day of July, 1974.

INVESTIGATION AND SUSPENSION NO. 8894[1]

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

Upon consideration of the record in the above-captioned proceeding, including the initial decision of the Administrative Law Judge, the exceptions thereto filed by the respondents, and the reply to exceptions filed by the protestant; and,

It appearing, That the Administrative Law Judge found in the title proceeding that the considered allowances were not shown to be just and reasonable, and ordered their cancellation;

It further appearing, That the evidence in the embraced proceeding establishes that the schedules under investigation are shown to be unjust and unreasonable;

And it further appearing, That the exceptions do not show any material errors in the Administrative Law Judge's statement and evaluation of the facts, his conclusions of law or findings; do not raise any material matters of fact or law not adequately considered and properly disposed of in his decision; and are not of such nature as to require the issuance of a report by Review Board Number 4 discussing the evidence and the arguments advanced in light of the exceptions;

Wherefore, and good cause appearing therefor:

We find, That the evidence considered in the light of the exceptions and the reply does not warrant a result different from that reached by the Administrative Law Judge, and that his statement of facts, conclusions and findings, being proper and correct in all material respects should be, and they are hereby, affirmed and adopted as our own.

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel the schedules described in the orders, entered October 19, 1973, by the Commission's Suspension and Fourth Section Board, on or before 35 days from the service date of this decision and order, upon not less than one day's notice to this Commission and to the general public by filing and posting in the manner prescribed by the Commission under section 405 of the Interstate Commerce Act, and that these proceedings be, and they are hereby, discontinued.

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[1] Embraces also No. 35921, Allowance for Delivery of Shipments To Forwarder Facilities.

No. I&S 8894

By the Commission, Review Board Number 4, Members FitzPatrick, Shaw, and Fisher.

ROBERT L. OSWALD,
Secretary.

(SEAL)

W-3

BEFORE THE

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 35921

ALLOWANCE FOR DELIVERY OF
SHIPMENTS TO FORWARDER FACILITIES

PETITION OF RESPONDENT TNT TARIFF
AGENTS, INC. FOR RECONSIDERATION
AND FOR FURTHER HEARING

Comes now TNT Tariff Agents, Inc. (TNT)[1/] respondent herein and by its attorney submits this Petition for Reconsideration and for Further Hearing.

I.

INTRODUCTION

This Petition for Reconsideration and for Further Hearing

1/ The Following are now participants in the agency tariff: National Carloading Corp.; Central States Forwarding Corp.; Master Forwarding Corp.

is submitted from the Decision and Order of the Commission Review Board No. 4 served July 23, 1974[2/] which affirmed and adopted the initial decision of the Administrative Law Judge served March 22, 1974. The order of Review Board No. 4 overruled the exceptions of the respondent TNT. The Review Board found that the schedules under investigation were shown to be unjust and unreasonable and it ordered the assailed schedules to be cancelled on or before 35 days from the service date of the Review Board's order.[3/]

The investigation in this proceeding is ancillary to the investigation in I & S Docket No. 8894. However, the assailed schedules were legally published and became effective on September 10, 1973. The assailed schedules reflected similar matter previously published in ABC Freight Forwarding Corporation (ABC) Tariff 9-E ICC-FF 77 Item 619A effective July 31, 1972 and Midland Forwarding Corporation (Midland) Item 619A Supplement 122 to its tariff ICC-FF 35 also effective July 31, 1972.

2/ The time for filing petitions has been extended by the Commission to October 21, 1974.

3/ The requirement for cancellation has been postponed to and including October 31, 1974.

While the lawfulness of the assailed schedules have been put into issue by the order of the Commission, it is clear that due process of law requires that the burden of proving the schedules to be unlawful is upon the Commission and the protestant The Eastern Central Motor Carriers Association, Inc., to establish a prima facie case. It is also axiomatic that the respondent herein TNT had no duty to go forward with any evidence until a prima facie case had been established. As will be shown below, neither the Commission nor the protestant established a prima facie case.

II.

BURDEN OF PROOF IS ON THE COMMISSION AND THE PROTESTANT TO ESTABLISHED A PRIMA FACIE CASE THAT ASSAILED LEGALLY ESTABLISHED SCHEDULES OF RATES ARE UNLAWFUL.

As indicated above the instant proceeding was initiated by the Commission as an ancillary proceeding to the investigation in I & S Docket No. 8894. The assailed schedules found in TNT's tariff ICC-FF 15, which became effective September 10, 1973, merely reflected similar matter previously found in ABC Freight Forwarding Corporation (ABC), Tariff 9-E ICC-FF 77

Item 619A effective July 31, 1972 and Midland Forwarding Corporation (Midland) Item 619A Supplement 122 to its tariff ICC-FF 35 effective July 31, 1972. Both ABC and Midland participated in TNT agency tariff. Essentially the investigation initiated in Docket No. 35921 concerns schedules containing rates which had been legally in effect well over a year before the initiation of the investigation by the Commission.

Since the assailed schedules had been in effect prior to the issuance of the order of investigation, it is clear that the burden of proof was not on the respondent, TNT. Import Volume Forwarder Rates, Pacific Coast to East 310 ICC 399, 400. See also Rice from Arkansas to Illinois and Missouri 306 ICC 111 where the Commission, Division 2 held at p. 114: "There is no burden on the respondents in this proceeding to establish that their rates are just and reasonable nor would the evidence of record support a finding that they are unlawful." (Underscoring supplied.) See also Class Rates From Chicago, Illinois to Texas 308 ICC 467, 468; and Forwarder Class Rates, Official and W. T. L. Territory 310 ICC 785, 790.

The mere fact that the instant proceeding is ancillary to an I & S proceeding does not alter or modify the principle of law that the burden of proof remains on those seeking to

hold legally established rates unlawful. Thus, in Lead and Zinc From Chicago, Illinois to Detroit, Michigan [illegible] ICC 103, the Commission in an analogous procedural situation held at p. 104:

> "The rate here considered was in effect prior to the time this investigation was initiated, and thus no burden of proof rest upon the respondent."

Moreover, had the respondent stood mute, this could not shift the burden of proof, nor could the failure to adduce evidence be used against the respondent. Thus, the Commission in Lead and Zinc supra further held (p. 104):

> "It follows that no inference of unlawfulness can be drawn from the fact that the respondent chose not to introduce any evidence."

The Administrative Procedure Act Title 5 USCA §556 (d) provides that "Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof." This has been given full judicial weight by the courts repeatedly citing the statute, as in Stewart v. Penny (D. C.-Nev.) 238 F. Supp. 821. The courts have insisted upon the fullest

implementation of the statutory requirement even where the proponent of the rule or order is an administrative agency rather than a private individual as in Kirby v. Shaw C.A. Calif. 1966, 358 F.2d 446, where the court held that the burden rested upon the Post Office Department as the proponent of a supplemental fraud order to at least establish that two products offered for sale by the appealing party, the first of which had been banned from the mails by the initial fraud order, were essentially the same and were offered for sale by the appealing party on essentially the same representations.

To the same effect is the holding in Concrete Materials v. FTC, C.A. 7, 1951, 189 F.2d 359, where the court held that in a hearing to determine whether the company should cease and desist making certain representations, the burden was on the Federal Trade Commission to prove its charges by competent, relevant and substantial evidence.

The foregoing clearly shows that due process of law requires that the burden of proof to establish a prima facie case is at all times upon the proponent of the rule -- i.e., in this case the Commission and the protestant. This

principle of law endures even though the respondent submits no evidence or some evidence. It follows that, unless the Commission and the protestant establish a prima facie case in the first phase by submitting valid and substantiated evidence, the Commission cannot rule against the respondent merely because the respondent failed to submit adequate evidence to support its position. Any other conclusion would relieve the Commission and the protestant of the burden of proof, and it would make a mockery out of due process of law.

In the instant proceeding, the Commission did not submit any evidence in support of its allegation of unlawfulness. Instead the Commission and the Judge relied upon evidence so general in nature that it hardly can be called substantial and pertinent evidence sufficient to establish a prima facie case. A reading of the Judge's initial decision which was adopted by the Review Board clearly demonstrates that the Judge seized upon the evidence submitted by respondent and used this as the basis for his finding that the assailed schedules were unjust and unreasonable. It is submitted that this constitutes reversible error and that on reconsideration

the Commission should so hold.

III.

THE EVIDENCE SUBMITTED BY PROTESTANT IS OF NO PROBATIVE VALUE AND THEREFORE INSUFFICIENT TO ESTABLISH A PRIMA FACIE CASE.

A review of the Statement of Facts and Argument submitted by protestant will clearly show that the alleged facts involve motor carrier bureau costs which are completely understated and which are not applicable to the respondent's freight forwarder operations. For example, the costs shown in Exhibit No. PRH1 simply fail to include the proper cost categories associated with the pickup functions involved. See verified statement of Mr. Craig Rockey attached herewith for a proper representation of the functions and costs thereof. On this basis alone, the Judge should have found that protestant had failed to meet its burden, and that the investigation should be discontinued.

Protestant admitted at p. 14 of its submission that:

"Protestant does not deny the fact that the publication of rates applicable [from] the terminals or receiving stations

(dock rates) is a well established method of publishing rates." (Underscoring supplied.)

Indeed, dock rates have been in existence for many years. For example, dock rates were published in ABC Freight Forwarding Corporation Tariff ICC-FF 48 effective March 30, 1959. Dock rates were provided for on pages 46 and 104. It should be noted that these dock rates were brought forward from earlier publications which go back much farther in time. Dock rates were also brought forward in TNT Tariff ICC-FF 4 which became effective March 19, 1973. Similarly Republic Carloading and Distributing Company, Inc. also published dock rates in its tariff ICC-FF 199 effective September 2, 1959, brought forward in Supplement No. 262 to ICC-FF No. 199 effective May 14, 1973. Also Universal Carloading and Distributing Company published dock rates effective May 2, 1962 in its tariff ICC-FF No. 308 brought forward in Supplement 165 to ICC-FF 308 effective April 4, 1973.

The foregoing clearly demonstrates that dock rates have been a part of freight forwarder publications for many, many years and that they are a form of rate publication indigenous to the freight forwarder industry. To declare as

the Judge did that dock rates constitute a disruptive force to the rate structure of TNT implies that this form of publication is novel and without precedent. This is hardly the case as shown above; and the $1.00 dock rate will cause no more disruption than dock rates have in the past.

In view of the inapplicability of the protestant's cost exhibit, it is clear that protestant's allegations are without substance. The remaining exhibits of the protestant, which merely depicts the method of arriving at the dock rates or which compare dock rates with non-comparable pickup and delivery allowances, hardly form the basis of a prima facie case where, in fact, there is no showing of diversion of traffic.

Protestant's cost analysis is not representative of the freight forwarder costs involved in this proceeding. Therefore, the finding of the Commission in Lead and Zinc supra at page 104 is warranted here. Thus, the Commission held:

> "We are not satisfied that such costs are representative of the respondent's costs on the articles here considered. There is no indication that the considered rate constitutes a destructive competitive practice.
>
> We find that the rate under investigation is not shown to be unlawful. An order will be entered discontinuing the proceeding."

The conclusion set forth above is fully warranted here.

Additionally, protestant cannot seek any support from the Commission's order affecting Lifschultz Fast Freight for as the Commission held in Forwarder Class Rates, Official and W. T. L. Territory 310 ICC 785, 790:

> "The mere reference to the findings and orders in a prior proceeding without some showing of similarity of transportation conditions affecting the respective rate situations, is inadequate support for a finding of unlawfulness. The burden of proof as to American's rates is not on American, but on those who seek to have those rates found unlawful."

Likewise, here protestant refers to numerous cases but that is not enough to establish a prima facie case.

IV.

THE PROCEEDING SHOULD BE REOPENED FOR FURTHER HEARING FOR THE RECEPTION OF EVIDENCE.

While respondent believes that no prima facie case has been established, nevertheless, out of an abundance of caution, respondent herewith submits for consideration the verified statement of Mr. Craig Rockey, a senior cost analyst with the economic consulting firm of Snavely, King and Tucker.

In the limited time available to research and prepare his study, Mr. Rockey arrives at conclusions which clearly demonstrate that the assailed dock rates are just and reasonable. Thus, Mr. Rockey's statement demonstrates that for the bulk of the TNT shipments handled, the $1.00 dock rate is compensatory, and therefore it is just and reasonable.

Mr. Rockey's statement not only is more representative than that of protestant, but it also takes into consideration 1974 costs. Consideration must be given to Mr. Rockey's statement by the Commission for a proper and lawful disposition of this proceeding.

V.

CONCLUSION

As indicated above, the publication of dock rates by forwarders is not novel. The present dock rates of TNT merely reflect current economic conditions. As the Commission held in Class Rates From Chicago, Illinois To Texas 308 ICC 467 at pp. 472-473:

"The rates under investigation have

> been in effect as either class or commodity rates for 7 years without any indication that they have caused a downward revision of rates to other points. They do not appear to be competitively destructive. In addition, they are generally compensatory for the freight forwarders as well as for the motor carriers. Recently amended section 15a (3) of the act provides that the rates of a carrier shall not be held up to a particular level to protect the traffic of another mode of transportation. By analogy, therefore, the reduced rates of Texas Shippers, a freight forwarder, should not be forced to an artificially high level merely to protect the traffic of motor-carrier competitors."

The most that can be said for the protestant's position is that the TNT schedules must be artificially held to a higher level merely to protect the traffic of its member carriers. However, despite the fact that these dock rates have been in effect since July 31, 1972, protestant has not been able to show that it has had to make a downward revision of its rates, nor has it shown any diversion of traffic. There has been no showing of harm to protestant or its member carriers.

In view of the foregoing, it is submitted that upon reconsideration that the Commission should find that protestant has not borne the burden of establishing a prima facie case and that the investigation be discontinued.

It is also requested that the proceeding be reopened to receive the attached statement of Mr. Craig Rockey.

Respectfully submitted,

H. Neil Garson

H. Neil Garson

Attorney for Respondent
TNT Tariff Agents, Inc.

OF COUNSEL:

Garson, de Member & Weiner
Court Square West Building
1400 North Uhle Street
Arlington, Virginia 22201

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of October, 1974 served a copy of this Petition of Respondent TNT Tariff Agents, Inc., upon parties of record via first class mail postage prepaid.

H. Neil Garson

VERIFIED STATEMENT OF CRAIG F. ROCKEY

My name is Craig F. Rockey. I am a transportation cost analyst for the economic consulting firm of Snavely, King & Tucker, Inc. with offices located at 1747 Pennsylvania Avenue, Washington, D.C.

Snavely, King & Tucker was formed in 1970 to provide consulting services in the fields of transportation and communications cost finding and economics. I have held the position of senior cost analyst with the firm since its formation. I have specialized in cost studies for motor carriers, railroad, water carriers, freight forwarders, pipe lines, and intermodal operations. I have previously submitted statements before the Interstate Commerce Commission (ICC) in connection with motor carrier operations. I hold a Bachelor of Science degree in transportation/economics from the University of Maryland.

I have been asked by ABC Freight Forwarding Corporation to identify, insofar as data are available, the motor carrier cost of picking up freight forwarder shipments and delivering them to freight forwarder docks. Specifically, I have been requested to determine whether, under what circumstances and for what sizes of shipments, the function could be performed for less than $1.00 per shipment.

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This pickup service could be performed by any one of these operations: (1) a freight forwarder using his own truck, (2) a local cartage company hired by either the freight forwarder or the shipper, or (3) the shipper himself using his own truck. In any case, there is no reason to assume that the physical operations, the equipment, or the man-hours required differ significantly as between these three types of operators. As I will discuss subsequently, there would likely be some difference in the capital costs, overheads, and billing and collecting costs as between a cartage operator on the one hand and a freight forwarder of shipper on the other.

The Interstate Commerce Commission's Section of Cost and Valuation annually publishes a statement which shows variable service unit costs and performance factors for motor carrier operation. These data are shown separately for each motor carrier region in the United States. The latest of these publications is Statement Number 2C1-71, "Cost of Transporting Freight by Class I and Class II Motor Common Carriers of General Commodities," July 1973. This publication provides cost factors for all regions and territories for the year 1971.

I have selected for my study the Eastern-Central region. This region corresponds roughly with the Northeast quadrant of the country east of the Mississippi River and north of the Ohio and Potomac Rivers. I have selected this region, first, because it contains the majority of the industrial activity of the United States and, second,

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because the protestant in this proceeding is the Eastern Central Motor Carrier Association, Inc. (ECMCA) which covers this same general area. The cost data presented in this statement were derived from a sample of 20 Class I common carriers of general freight, principally operating in the Eastern-Central territory and having gross revenues over $500,000 with 75 percent or more such revenues being derived from general commodities. Eighteen of the 20 carriers used in this sample are members of the ECMCA.

The specific costs to which I shall refer, relate only to the functions involved in pickup and delivery operations at origin and destination terminals. The costs presented herein apply to small shipments under 5,000 pounds such as would most likely be handled by freight forwarding companies. For shipments of this size there is no reason to suppose that the equipment, facilities, labor, and other operational characteristics of the pickup service of Class I common carriers would differ materially from those involved in the pickup operations of freight forwarding companies, cartage operators, or shipper-owned truck fleets.

Attachment A is a true copy of page 40 of ICC Statement Number 2C1-71. This page contains a table which presents variable terminal costs at origin, destination, and interchange points for shipments weighing up to 9,999 pounds. Costs are presented for four separate functions, three of which would be required for pickup service by a cartage operator and two by a private shipper or a freight forwarder.

SNAVELY, KING & TUCKER, Inc.
ECONOMIC CONSULTANTS

The stop costs on Attachment A relate to the loading of the pickup vehicle at the shipper's dock. They do not cover the unloading at the forwarder's dock. However, they relate to both pickup and delivery at both ends of an inter-city line-haul movement. In effect, they cover two stops. The pickup of a freight forwarder shipment can be equated with one stop. Since the functions performed at the other end, namely delivery at the freight forwarder's dock, are largely the same, it too can be equated with one stop. The complete pickup will thus equate with two stops, which as pointed out are what is reflected in column (4) of Attachment A.

Running costs cover the cost of vehicle operation and driver wages while moving between shipper's facility and carrier's terminal. These costs also cover both origin and destination. They would, therefore, have to be halved to apply to a single pickup.

Platform handling costs involve both the off-loading from the pickup vehicle and the loading of the line-haul vehicle. I have used a second stop cost as a more appropriate measure of the off-loading cost because of the impossibility of dividing the platform cost between the pickup and line-haul function.

Billing and collecting costs would not be incurred for a freight forwarder himself or by the shipper. However, a cartage operator

would have to prepare a bill for submission to his customer, be he a freight forwarder of a shipper. Therefore, billing and collecting costs would be incurred for pickup by a cartage carrier.

The lower portion of Attachment A displays a number of density adjustments which are used to inflate or deflate the costs presented on the upper portion depending upon density, that is, pounds per cubic foot of freight typically handled. I have been informed by ABC freight Forwarding that the average density for the traffic handled by that company is approximately ten pounds per cubic foot. I have, therefore, adjusted the respective stop and running costs by a factor corresponding to the simple average of the two categories, 5 to 9.9 pounds per cubic foot and 10 to 14.9 pounds per cubic foot. This resulted in an inflator of 1.06 for stop costs and 1.12 for running costs. In Attachment B, I have applied adjustments to the raw costs derived from Attachment A. The adjusted costs are shown in columns (3) and (5) of Attachment B.

The costs presented in Attachment A relate to year 1971. The inflation in the three years since 1971 requires a restatement of those costs to current levels. For this restatement, I have employed the gross national product implicit price deflator for the third quarter of 1974 as a ratio to that in 1971 to yield 1974 costs in column (7). This factor no doubt understates the impact of inflation on motor

common carrier operations. It suggests a 21.6 percent average increase in prices. Yet the inflation in fuel costs for motor carriers has exceeded 130 percent since 1972.[1/]

Thus, column (7) of Attachment B displays a conservative estimate of the current variable pickup costs at each of 15 different unit shipment weights. It shows a breakpoint at about 1,000 pounds. Any shipment less than 1,000 pounds incurs a cost greater than $1.00. Shipments over that weight involve a lesser cost. As discussed above, a cartage operator providing the same pickup service would incur a billing and collecting cost for each shipment. Adding the costs in column (7) in Attachment A to those in column (6) in Attachment B would increase the breakpoint, but not above the level of one ton (2,000 pounds).

These costs, however, are <u>variable</u> costs and do not include the fixed costs involved in owning and maintaining a truck fleet. These costs would have to be incurred to some degree by any fleet operator, be he a shipper, freight forwarder, or cartage company. The variable expenses presented in Attachments A and B are based on 90 percent of total operating expenses, rent, and taxes. Therefore, full costs would be on the order of 10 percent greater. Even then, they would

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[1/] American Trucking Association's estimate.

still exclude any allowance for normal profit and the accompanying income tax. They, therefore, represent only the "bare bones" cost of pickup service.

These considerations suggest that a compensatory pickup service in the Eastern-Central territory can be performed for less than $1.00 only for shipments weighing about one ton or more. Shipments weighing less than that amount will incur a cost greater than $1.00, particularly if performed by an independent cartage operator who is obliged to cover full fixed costs, corporate overheads, and earn a reasonable profit. The 1972 Transport Statistics, Part 8[1/] reveals that the average shipment weight for Class I freight forwarders was 602 pounds. The specific average weight per shipment for ABC Freight Forwarding Corporation was 605 pounds. However, a sample study of ABC's shipments during the 35 weeks of operations ending August 31, 1974 revealed an average weight per shipment of 480 pounds.

1/ Interstate Commerce Commission, Bureau of Transport Economics and Statistics, Transport Statistics in the United States, Part 8, Freight Forwarders, Table 2.

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EASTERN-CENTRAL TERRITORY

Table 2, Variable Terminal Costs at Origin and Destination and at Interchange Points for Shipments weighing up to 9,999 Pounds [1]

(Costs in cents per hundredweight)

Weight of shipment (pounds)	Origin and destination terminal costs						Cost for one interchange of	
	Total terminal costs Cols. 3 + 6 + 7	Pickup and delivery			Platform handling costs	Billing and collecting costs	Equipment [2]	Cargo
		Total P&D Cols. 4 plus 5	Stop costs [3]	Running costs				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
100	727.7	506.9	181.4	325.5	94.8	126.0	xxx	275.5
200	456.6	298.8	111.1	187.7	94.8	63.0	xxx	183.6
300	363.3	226.5	86.0	140.5	94.8	42.0	xxx	150.9
400	315.3	189.0	74.0	115.0	94.8	31.5	xxx	134.1
500	286.0	166.0	65.5	100.5	94.8	25.2	xxx	123.3
600	265.3	149.5	59.5	90.0	94.8	21.0	xxx	115.8
700	250.1	137.3	55.4	81.9	94.8	18.0	xxx	110.0
800	238.0	127.5	52.0	75.5	94.8	15.7	xxx	105.7
900	228.3	119.5	49.5	70.0	94.8	14.0	xxx	102.6
1,000	220.2	112.8	47.0	65.8	94.8	12.6	xxx	100.0
2,000	186.1	87.5	36.5	51.0	92.3	6.3	xxx	88.3
3,000	161.9	69.0	28.9	40.1	88.7	4.2	xxx	82.2
4,000	149.3	62.2	25.8	36.4	84.0	3.1	xxx	78.7
5,000	138.9	57.1	23.8	33.3	79.3	2.5	xxx	76.2
6,000	128.8	52.7	22.5	30.2	74.0	2.1	xxx	74.2
7,000	118.7	48.9	21.6	27.3	67.8	1.8	xxx	72.4
8,000	109.3	46.3	20.9	25.4	60.8	1.6	xxx	70.9
9,000	100.3	44.2	20.2	24.0	53.7	1.4	xxx	69.6

Density Adjustment Ratios Applicable to the Costs in the Respective Columns of Above Table [4]

(50% of running cost treated as variable with density)

Density group (pounds per cubic foot)	Origin and destination					Interchange of cargo
	Pickup and delivery			Platform handling	Billing and collecting	
	Total P & D	Stop	Running			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
0 - 4.9	1.37	1.12	1.54	3.09	1.00	2.13
5 - 9.9	1.15	1.08	1.19	1.95	1.00	1.50
10 - 14.9	1.05	1.04	1.05	1.37	1.00	1.19
15 - 19.9	1.00	1.02	.99	1.07	1.00	1.03
20 - 29.9	.98	1.00	.97	.80	1.00	.90
30 - 39.9	.98	.98	.97	.69	1.00	.85
40 & over	.97	.96	.97	.65	1.00	.82

1. See item 8 of explanatory data for examples of the application of the data in this table to specific movements of traffic.
2. No adjustment is provided for density because the total running cost on single-stop trips is charged to whatever weight is handled on such trip thus automatically adjusting for the effect of density on the running cost. The stop costs represents the actual interchanging of the vehicles which would not be affected by the density of the traffic interchanged.
3. Total expense for a trailer drop and pickup at origin or destination, not both, is 240.60¢.
4. The adjustment ratio for a density group (pounds per cubic foot) more nearly represents a density for the midpoint of the group. Therefore, such ratios should be trended to obtain proper density ratios for traffic whose density may fit within the density group but does not approximate the midpoint of the group.

ATTACHMENT B

VARIABLE PICKUP COSTS
FOR SHIPMENTS WEIGHING UP TO 5,000 POUNDS
EASTERN-CENTRAL REGION
(Costs in Cents per Hundredweight)

Weight of Shipment (Pounds) (1)	1971 Running Costs		1971 Stop Costs		Total 1971 Pickup Costs (6)	Total 1974 Pickup Costs 1/ (7)
	Unadjusted (2)	Col.(2) x 1.12 Density Factor (3)	Unadjusted (4)	Col.(4) x 1.06 Density Factor (5)		
100	162.8¢	182.3¢	181.4¢	192.3¢	374.6¢	455.7¢
200	93.9	105.2	111.1	117.8	223.0	271.3
300	70.3	78.7	86.0	91.2	169.9	206.7
400	57.5	64.4	74.0	78.4	142.8	173.7
500	50.3	56.3	65.5	69.4	125.7	152.9
600	45.0	50.4	59.5	63.1	113.5	138.1
700	41.0	45.9	55.4	58.7	104.6	127.2
800	37.8	42.3	52.0	55.1	97.4	118.5
900	35.0	39.2	49.5	52.5	91.7	111.5
1,000	32.9	36.8	47.0	49.8	86.6	105.3
2,000	25.5	28.6	36.5	38.7	67.3	81.9
3,000	20.1	22.5	28.9	30.6	53.1	64.6
4,000	18.2	20.4	25.8	27.3	47.7	58.0
5,000	16.7	18.7	23.8	25.2	43.9	53.4

1/ Column (6) x 1.2164, based on GNP Implicit Price Deflator between total year 1971 and 3rd quarter 1974. (Source: U.S. Department of Commerce, Bureau of Economic Analysis.)

Source: ICC Publication, Statement No. 2C1-71, Cost of Transporting Freight by Class I and Class II Motor Common Carriers of General Commodities, page 40.

VERIFICATION

DISTRICT OF)
) SS
COLUMBIA)

CRAIG F. ROCKEY being duly sworn, deposes and says that the foregoing statement and accompanying appendices are true and correct to the best of his knowledge, information, and belief.

Craig F. Rockey

Subscribed and sworn to
before me this 21st day
of October 1974.

Notary Public
My Commission Expires June 14, 1978

REPLY BY EASTERN CENTRAL MOTOR CARRIERS TO PETITION BY TNT TARIFF AGENTS FOR RECONSIDERATION AND FURTHER HEARING

Before the

INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET No. 8894 1/

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

REPLY TO RESPONDENT'S PETITION FOR RECONSIDERATION

AND FOR FURTHER HEARING

ALSO PROTESTANT'S MOTION

TO STRIKE

THE EASTERN CENTRAL MOTOR CARRIERS
ASSOCIATION, INC.

PROTESTANT

John I. Mayfield, Jr.
Registered Practitioner

FOR PROTESTANT

2545 Bailey Road
Cuyahoga Falls, Ohio
Mail Address: P. O. Box 3600
Akron, Ohio 44310

Dated: November 8, 1974
Due: November 11, 1974

1/ Also embraces Docket No. 35921, Allowance For Delivery of Shipments To Forwarder Facilities

Before the

INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET No. 8894[1/]

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

REPLY TO

RESPONDENT'S PETITION FOR RECONSIDERATION

AND FOR FURTHER HEARING

ALSO PROTESTANT'S MOTION

TO STRIKE

Comes now The Eastern Central Motor Carriers Association, Inc., protestant in the above-entitled cases, and respectfully submits its reply to respondent's petition for reconsideration of the Decision and Order of the Commission, Review Board Number 4, served July 23, 1974, and for further hearing.

PRELIMINARY STATEMENT

Under the date of October 11, 1973, this Association protested and requested suspension of Item 93 on 8th Revised Page 12 to Lifschultz Fast Freight, Inc., Tariff No. 12-B, ICC-FF No. 8 (Lifschultz), scheduled to become effective on October 25, 1973, and requested that an investigation be instituted against Items 619 and 80040 of TNT Tariff Agents, Inc., Agent Tariff No. 14, ICC-FF No. 15. The assailed matters involved allowances of one dollar ($1.00) per hundred pounds on less than trailer volume shipments (Lifschultz) or LTL shipments (TNT) that have been transferred to the freight forwarder at

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1/ loc.cit.

its facility without expense to the forwarder.

After due consideration of protestant's petition for suspension and investigation and the reply for and on behalf of Lifschultz[2/], the Suspension and Fourth Section Board, by its order dated October 24, 1973, concluded to place the Lifschultz proposal under suspension to and including May 24, 1974, in I. & S. Docket No. 8894, Allowance For Delivery Of Shipments To Forwarder Facilities; and the Commission, by its own motion, order dated October 24, 1973, instituted an investigation into the TNT proposals, matter in issue herein, under Docket No. 35921, Allowance For Delivery Of Shipments To Forwarder Facilities.

The cases were handled under modified procedure, per orders dated October 24, 1973, with the initial decision, served March 22, 1974, of an Administrative Law Judge, on a consolidated basis, ruling that the matter in issue was found not shown to be just and reasonable and ordering the schedules cancelled and the proceedings discontinued.

Subsequently, respondents filed exceptions to the initial decision and protestant filed its timely reply. The matter was considered by the Commission, Review Board Number 4, and its Decision and Order was served July 23, 1974, affirming and adopting as its own the result reached by the Administrative Law Judge.

Protestant hereby acknowledges receipt of the Petition for Reconsideration of the Decision and Order of the Commission, Review Board Number 4, served July 23, 1974, and the Petition for Further Hearing as filed by TNT Tariff Agents, Inc. (TNT), respondent in Investigation Docket No. 35921, supra, Respondent

2/ Lifschultz stated that its reply statement was not timely received.

thereby requests that the Commission find that protestant has not borne the burden of establishing a prima facie case; that the investigation be discontinued; and it requests that the proceeding be reopened to receive additional evidence. 163a

MOTION TO STRIKE

Protestant hereby requests, for reasons hereinafter stated, that the Commission strike from the record the "Verified Statement of Craig F. Rockey"and the references made thereto in the first paragraph, Part III, Page 8 and in Part IV, Pages 11 and 12 of respondent's petition.

This assailed matter constitutes the introduction of new evidence which is untimely submitted and contrary to the Commission's General Rules of Practice. The Commission has consistantly held that, under its General Rules of Practice, new matter may not properly be embodied in exceptions. See Stopping in Transit - Agricultural Implements, 303 ICC 617. Accordingly, it is protestant's motion that the identified matter be stricken from the record for the reason that it represents an attempt to introduce new evidence.

REPLY TO RESPONDENT'S PETITION FOR RECONSIDERATION

Protestant respectfully submits, for reasons hereinafter stated, that the Review Board Number 4 did not err; that protestant did establish a prima facie case; and that the matter should be cancelled as ordered.

Respondent's main points in its petition for reconsideration is that the matter in issue in Investigation Docket No. 35921, supra, is ancillary to the matter in issue in Investigation And

Suspension Docket No. 8894, supra; that it is in effect and was legally published; that the burden of proof to its lawfulness is upon protestant and the Commission; and that neither the Commission nor the protestant established a prima facie case.

Protestant does not now nor ever has denied the fact that the matter in issue in Investigation Docket No. 35921, supra, is effective and legally published in TNT Tariff Agents, Inc., Agent Tariff No. 14, ICC-FF No. 15. However, protestant does and has questioned its lawfulness.

It is a well known fact, to knowledgeable transportation people, that in investigation proceedings the burden of proof is upon the compainant (protestant). This was never denied by protestant and it was acknowledged in Part VI, Page 7 of protestant's Reply to Respondent's Exceptions to the Initial Decision of the Administrative Law Judge.

It has been stated by respondent that protestant has not established a prima facie case. The fact that protestant has established a prima facie case was adequately covered by protestant in Parts III and VI of its Reply to Respondents' Exceptions to the Initial Decision of the Administrative Law Judge. The Judge did not err in so finding (Pages 9 and 10 of Initial Decision). Furthermore, the Review Board Number 4 affirmed and adopted the finding of a prima facie case.

In view of the foregoing, protestant submits that respondent has not shown any material errors in the Administrative Law Judge's statement and evaluation of the facts of this proceeding nor did the Review Board err in its affirmation and adoption of the Initial Decision; wherefore, the Commission should affirm the prior findings and order the matter cancelled.

REPLY TO RESPONDENT'S
PETITION FOR FURTHER HEARING

Respondent's petition for further hearing is based solely on the verified statement of Mr. Craig Rockey which has been untimely submitted within its petition. Protestant has, previously, requested that this matter be stricken from the record. Respondent's council should know that a petition for reopening for further hearing should only contain an explanation of the type of evidence that is to be submitted and the reasoning for its need, not the evidence itself.

Furthermore, the evidence, besides acknowledging the fact that protestant has established a prima facie case, is simply an attempt to update, in part, the pickup costs submitted by protestant's Witness Paul R. Hadley in his Exhibit No. PRH-1 of protestant's Statement of Facts and Argument. Respondent's evidence is, in protestant's opinion, erroneous on at least two points.

First, the stop costs in Attachment B contain the full costs presented in Attachment A, whereas the Commission's Statement Number 2C1-71 states in the first paragraph of Page 13 that, "No separation has been made to recognize any difference in the cost of picking up versus the cost of delivering the same or similar shipments. Therefore, one-half the pickup and delivery costs shown in Table 2 represent pickup costs and one-half represent delivery costs." No provision has been made to apply all of the stop costs for either pickup or delivery.

Secondly, the costs have been adjusted to reflect a specific density that is based on unsubstantiated information supplied by ABC Freight Forwarding (first full paragraph on Page 5 of verified statement). Because of the all encompassing

nature of matter in issue, protestant submits that no additional adjustments for density should be made. The only information submitted for such an adjustment is contained in the immediately cited paragraph in which it is stated, "I have been informed by ABC Freight Forwarding that the average density for the traffic handled by that company is approximately ten pounds per cubic foot." No data nor even a reference to a source from which the ten pounds was derived has been cited. In fact, there is not even a clarifying statement that the density is for the issue traffic, that which is delivered to the forwarder at its facilities.

From all the foregoing, protestant must conclude that respondent's petitions are simply a vehicle by which it desires to submit new unsubstantiated evidence. Protestant submits that no material points have been adduced that would warrant the reopening of the instant matter for further hearing, therefore, such request should be denied.

WHEREFORE, in view of all the foregoing, protestant respectfully prays that the Commission grant protestant's motion to strike; that it deny the petition to reopen; and that it will affirm the findings of the Administrative Law Judge and Review Board Number 4 and adopt them as its own.

Respectfully submitted,

THE EASTERN CENTRAL MOTOR CARRIERS ASSOCIATION, INC.

PROTESTANT

John I. Mayfield, Jr.
Registered Practitioner

FOR PROTESTANT

2545 Bailey Road
Cuyahoga Falls, Ohio
Mail Address: P. O. Box 3600
Akron, Ohio 44310

Dated: November 8, 1974
Due: November 11, 1974

JIM/cmb

Files: C-6874; C-6876

CERTIFICATE OF SERVICE

I hereby certify that I have this day served upon all parties of record in this proceeding by mailing first class mail, postage prepaid, a copy thereof properly addressed to each such party.

Dated at Cuyahoga Falls, Ohio, this eighth day of November, 1974.

John I. Mayfield, Jr.

(2.1)

BEFORE THE

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 35921

ALLOWANCE FOR DELIVERY OF
SHIPMENTS TO FORWARDER FACILITIES

RESPONDENT'S REPLY TO MOTION TO STRIKE

H. Neil Garson

Attorney for Respondent
TNT Tariff Agents, Inc.

OF COUNSEL:

Garson, deMember, & Weiner
Court Square West Building
1400 North Uhle Street
Arlington, Virginia 22201

Dated: December 2, 1974

BEFORE THE

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 35921

ALLOWANCE FOR DELIVERY OF
SHIPMENTS TO FORWARDER FACILITIES

RESPONDENT'S REPLY TO
MOTION TO STRIKE

Comes now TNT Tariff Agents, Inc., (TNT) respondent herein and by its attorney submits this reply to protestant's motion to strike.

I

The Eastern Central Motor Carriers Association, Inc. protestant herein has filed a motion to strike to Respondent's Petition for Reconsideration and for Further Hearing. In support of its motion protestant relies upon Stopping in Transit - Agricultural Implements, 303 ICC 617. The aforesaid decision clearly has no application to the pleadings filed by the respondent since it concerns exceptions to report and order recommended by an examiner. This is also recognized by the protestant who specifically notes that the Stopping In Transit case concerns only exceptions to an examiner's report. It is submitted that the foregoing proceeding has no application to properly submitted petitions as in the instant proceeding. Moreover, the Commission's General Rules of

Practice specifically call for a liberal construction of the rules to secure a just determination of the issues presented. See Rule 2, 49CFR, Section 1100.2.

In the instant proceeding where challenged rate matter has been in effect for a long time, the respondent must be accorded full opportunity to defend the challenged matter to secure a just decision.

II

Protestants allegations concerning the verified statement of respondent's expert witness simply attempts to cloud the issue and to misconstrue the cost evidence submitted with his statement. It is apparent that unless respondent is permitted to submit a clarifying statement, respondent will be prejudiced and the Commission will not have before it a full and complete record of the evidence upon which respondent relies. The attached verified statement of Mr. Craig F. Rockey clearly dispels protestant's misconceptions of his previously submitted cost study. It is submitted that a just decision requires that the Commission include in its considerations the attached verified statement of Mr. Craig F. Rockey. To take the position of the protestant is to add more fuel to the inflationary spiral to the detriment of shippers, who, prefer respondent's freight forwarder service as distinguished from a motor carrier service. Protestant cannot prevail where it cannot show that it has been harmed in anyway by the rate matter under investigation and where protestant's evidence fails in the

first instance to establish by clear and convincing evidence a prima facie case of the unlawfulness of the rate matters under consideration.

CONCLUSION

It is submitted that the protestant's motion to strike should be denied; that respondent's petition be granted; that the Commission find that protestant has not established a prima facie case of the unlawfulness of the rate matter under investigation; and that the investigation be discontinued.

Respectfully submitted,

H. Neil Garson

H. Neil Garson

Attorney for Respondent
TNT Tariff Agents, Inc.

OF COUNSEL:

Garson, deMember, & Weiner
1400 North Uhle Street, Suite 404
Arlington, Virginia 22201

CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of December, 1974 served a copy of this Reply of Respondent TNT Tariff Agents, Inc., upon parties of record via first class mail, postage prepaid.

H. Neil Garson

Dated

VERIFIED STATEMENT OF CRAIG F. ROCKEY

Reference to the allegations made by protestant on page 5 of their Reply to Respondent's Petition for Reconsideration clearly indicates there exists misconceptions of Attachment A and B of my statement dated October 21, 1974. The area of question concerns not the source[1] or validity of the costing statistics themselves but rather the method and procedure involved in their application.

The $1.00 per hundred pounds allowance is provided to those shippers who assume the pickup functions normally undertaken by the freight forwarder. The three basic functions which the shipper (or his assign) must assume in order to receive the allowance are: 1) pickup of the freight at the shipper's facility, 2) movement of the freight to freight forwarder's dock, and 3) unloading from the pickup vehicle onto the freight forwarder's dock.[2]

---

[1]Statement Number 2C1-71 "Cost of Transporting Freight by Class I and Class II Motor Common Carriers of General Commodities," July 1973, Section of Cost and Valuation, Bureau of Accounts, Interstate Commerce Commission.

[2]Forwarder typically supplies only one individual to monitor freight being tendered.

Since the source document identifies costs which reflect both pickup and delivery with no attempt to "recognize any difference in the cost of picking up versus the cost of delivering the same or similar shipments," minor adjustments must be made in order to represent only those costs associated with the pickup function.

The transport or running costs of Appendix A were simply halved in Appendix B to properly represent this sector of cost incurred only during pickup. Since the stop costs of Appendix A are representative of costs incurred by both pickup at shipper's facility and delivery to consignee's facility, the costs associated with only the pickup portion is one-half of the stop cost.

Thus, two of the three costs which must be borne by the shipper (in order to receive the $1.00 allowance) have been identified. The remaining function of removing the freight from the pickup vehicle and placing it on the forwarder's dock is basically the converse of loading the freight into the vehicle at the shipper's dock. The similarity of these two functions renders them comparable cost-wise. Therefore, by doubling the cost incurred by loading the freight at the shipper's dock in order to account for the equated cost of unloading the freight at the

forwarder's dock, full utilization of Attachment A stop costs is justified.

It is true that the source document has made no provision to apply all of the stop costs for either pickup or delivery. But the cost of off-loading freight from the pickup vehicle to the forwarder's dock has been included in the Attachment A column of platform handling costs. Because this platform handling cost category contains costs related to movement of freight "across" the carrier's (or forwarder's) dock and loading of freight onto a line haul vehicle as well as the unloading of the pickup vehicle and other associated labor-intensive terminal expenses, it is impractical, if not impossible, to divide the platform cost between the pickup and line haul functions. Hence, a further incentive for the application of stop cost to cover both the pickup vehicle loading at shipper's dock and unloading at forwarder's dock.

As the derivation of the ten pounds per cubic foot density factor, I was informed of the measure by Mr. F. H. Zentner, Vice President of Traffic, ABC Freight Forwarding Corporation. Mr. Zentner stated that this is a company-wide standard based upon the average trailer (40') cargo weight of 20,000 pounds divided by the 2,000 usable cubic footage of the trailer.

VERIFICATION

DISTRICT OF)
) SS
COLUMBIA)

CRAIG F. ROCKEY being duly sworn, deposes and says that the foregoing statement is true and correct to the best of his knowledge, information, and belief.

Craig F. Rockey

Subscribed and sworn to
before me this 26th day
of November 1974.

Notary Public
My Commission Expires June 14, 1976

ORDER OF INTERSTATE COMMERCE COMMISSION
DATED JANUARY 24, 1975

ORDER

SERVICE DATE JAN 31 1975

At a session of the INTERSTATE COMMERCE COMMISSION, Division 2, acting as an Appellate Division, held at its office in Washington, D. C., on the 24th day of January, 1975.

INVESTIGATION AND SUSPENSION DOCKET NO. 8894*

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

Upon consideration of the record in the above-entitled proceeding, of the petition filed by the respondent, TNT Tariff Agents, Inc., on October 21, 1974, for reconsideration of the decision and order of Review Board Number 4, entered July 12, 1974, and for further hearing, of protestant's reply thereto containing a motion to strike, filed November 11, 1974, and of respondent's reply to the motion to strike, filed December 2, 1974;

It is ordered, That the petition for reconsideration and for further hearing be, and it is hereby, denied for the reason that sufficient grounds have not been presented to warrant granting the action sought.

And it is further ordered, That the order entered in this proceeding on July 12, 1974, which order, pursuant to section 17(8) of the Interstate Commerce Act, was stayed pending disposition of the petition be, and it is hereby, reinstated and modified so as to become effective 30 days from date of service hereof, with no other change in the requirements of said order.

By the Commission, Division 2, acting as an Appellate Division.

ROBERT L. OSWALD,
Secretary.

(SEAL)

RECEIVED
FEB

*Embraces No. 35921, Allowance for Delivery of Shipments to Forwarder Facilities.

SERVICE DATE
MARCH 24, 1975

ORDER

INTERSTATE COMMERCE COMMISSION

Docket No. 35921

ALLOWANCE FOR DELIVERY OF SHIPMENTS
TO FORWARDER FACILITIES

POSTPONEMENT OF EFFECTIVE DATE OF ORDER

PRESENT: GEORGE M. STAFFORD, Chairman, to whom the above matter, which is the subject of this order, is assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding, including the initial findings and decision of the Administrative Law Judge served March 24, 1974, that the evidence established that the schedules under investigation were shown to be unjust and unreasonable; the decision and order of Review Board No. 4 served July 23, 1974, which adopted the recommended findings of the Administrative Law Judge; the order of the Commission, Division 2, Acting as an Appellate Division, served January 31, 1975, which denied the petition for reconsideration of respondent, TNT Tariff Agents, Inc.; and of the filing of a Petition for Review and a Motion for Stay pendente lite of the Commission's order served January 31, 1975, by the respondent in TNT Tariff Agents, Inc. v. United States of America, et al. (Docket No. 75-4052, U.S. Court of Appeals, Second Circuit);

It appearing, That respondent has requested an order staying the effectiveness of the Commission's order served January 31, 1975, in the above-entitled Court proceeding, and that the Court has scheduled oral argument on the respondent's Motion for Stay for Tuesday, April 1, 1975;

It further appearing, That the effective date of the order should be postponed.

It is ordered, That the order of the Commission, Division 2, Acting as an Appellate Division, served January 31, 1975, shall be, and it is hereby, postponed pending further order of the Commission.

Dated at Washington, D. C., this 21st day of March, 1975.

By the Commission, Chairman Stafford.

ROBERT L. OSWALD
Secretary

(SEAL)

LETTER OF GARSON, DE MEMBER & WEINER, ESQS., DATED FEBRUARY 28, 1975 TRANSMITTING PETITION BY TNT TARIFF AGENTS FOR EXTRAORDINARY RELIEF

LAW OFFICES
GARSON, DE MEMBER & WEINER
COURT SQUARE WEST BUILDING
1400 NORTH UHLE STREET
ARLINGTON, VIRGINIA 22201

TELEPHONE (703) 527-7910

February 28, 1975

H. NEIL GARSON
RAYMOND P. DE MEMBER*
KENNETH R. WEINER

MICHAEL S. LIEBER**

*MEMBER MASSACHUSETTS & D. C. BARS ONLY
**MEMBER D. C. BAR ONLY

CABLE ADDRESS
NEILGAR
ARLINGTON, VA.

SUITE 450
1747 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D. C. 20006
TELEPHONE (202) 466-2263

Secretary
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

RE: Docket No. 35921
Allowance for Delivery of
Shipments to Forwarder
Facilities - Petition of Respondent
TNT for Reconsideration and for
Further Hearing

Dear Sir:

Attached herewith for filing are the original and fifteen (15) copies of Respondent's Petition for Extraordinary Relief. Please note that Respondent requests immediate relief by way of postponement of the order of the Commission served January 31, 1975. Copies of the petition and of this letter have been served on parties of record.

Sincerely yours,

H. Neil Garson

H. Neil Garson

HNG/bgm
Enclosures
cc: All parties of record

BEFORE THE

INTERSTATE COMMERCE COMMISSION
DOCKET NO. 35921

ALLOWANCE FOR DELIVERY OF SHIPMENTS
TO FORWARDER FACILITIES

PETITION FOR EXTRAORDINARY RELIEF

Comes now TNT Tariff Agents, Inc. (TNT) respondent herein and by its attorney submits this Petition for Extraordinary Relief under Rule 1.102 of the General Rules of Practice for reconsideration of the Order of Division 2 acting as an Appellate Division served January 31, 1975 and for further hearing.

In view of the importance of the basic legal issue raised by this petition and since there is no other avenue of appeal to the entire Commission, it is hereby requested that this petition be considered and acted upon by the entire Commission. Since the order of the Commission becomes effective on March 2, 1975 it is further requested that the order of Division 2 be postponed pending disposition of this petition. A postponment of the Commission's order is required by the respondent for at least 30 days since it cannot physically meet the present effective date of March 2, 1975.

In support of this Petition TNT states that the Order of Division 2

served January 31, 1975, as well as the Decision and Order of Commission Review Board No. 4 served July 23, 1974, and the initial decision of the Administrative Law Judge served March 22, 1974 have denied respondent due process of law and are contrary to the requirements of the Administrative Procedure Act, 5 USC Sections 551-557. Respondent has repeatedly called attention to the fact that Docket No. 35921 is not a case of Investigation and Suspension, but rather is in the nature of a complaint or investigation to cancel what were heretofore exisitng legal rates, legally published and effective almost one and one-half years ago, i.e. September 10, 1973. Respondent has repeatedly stated that because of this basic fact, which has neither been acknowledged or denied in any of the above-referred to decisions or orders of the Commission, that due process of law and specifically the Administrative Procedure Act, requires that those seeking to cancel the rates as unlawful have the burden of proof in seeking such an order of rule. 5 USC Section 557.

The Commission has completely failed to address itself to this fundamental fact and this basic requirement, but issues generalities and "boilerplate" language in each successive order denying respondent's petitions and requests for consideration of its contentions as to fact and law in this regard. The Commission thereby has denied respondent its "day in court".

The Commission's failure to state intelligent reasons for its decision constitutes reversible error of law under the Administrative

Procedure Act 5 USC Section 557. Lawrence v. C.A.B. 343 F. 2d583. The Commission cannot avoid such error in reaching its decision by stating general conclusions without setting forth specific findings and rational conclusions based upon substantial evidence in the record as a whole. National Freight, Inc. v. U.S. 359 F. Supp. 1153.

Respondent had no burden to establish that the legally effective rates are just and reasonable nor has there been any probative evidence of record submitted by the Commission or the protestant to support a finding that the rates are unlawful. See Import Volume Rates, Pacific Coast to East 310 ICC 399, 400 and Rice From Arkansas to Illinois and Missouri 306 ICC 111.

The confusion of evidence and legal error by the Administrative Law Judge is clearly shown by the findings made in his discussion and conclusions after analysis of the evidence submitted in the I & S case against Lifschultz Fast Freight, the Administrative Law Judge then concludes that it was the duty of TNT to prove the lawfulness of the assailed schedules. Thus, the Administrative Law Judge states at p. 10 of his opinion

> Clearly such a disruption of the rate structure, accomplished without any change in the service performed of delivering shipments to the forwarders' facilities in lieu of a forwarder provided service, requires TNT to go forward and show the justness and reasonableness of the Items. This it has failed to do.

The foregoing is completely in error since no probative evidence had been submitted by the Commission or the protestant under the Commission's established standards against the legally effective schedules of TNT to constitute a prima facie case. The confusion of the burdens of proof by the Administrative Law Judge between that required in an I & S case and the complaint case constitutes legal error to the detriment of TNT. This error was compounded by the orders of the Review Board and Division 2 when the orders adopted the opinion of the Administrative Law Judge and denied the petition of TNT.

Despite the fact that respondent does not have the burden of proof, as stated above in its previous petitions, nevertheless respondent has offered to present evidence in further hearing to clarify the record since the Commission has erroneously decided the basic issue of whether the legally published and effective rates were just and reasonable. In fact, prior action in this proceeding by the Commission never has properly taken into account the justness and reasonableness of respondent's rates. And, as stated above, the reason the Commission has erred so fundamentally is precisely because it has failed to adhere to the standards and requirements as to the burden of proof under the Administrative Procedure Act 5USC Section 551-557. It should be further pointed out that the cancellation of respondent's rates and allowances, which are beneficial to shippers and noninflationary, would, by virtue of the Commission's action here, result in increased inflation.

Fairness, justice and due process of law require that the Commission grant this petition for extraordinary relief. A failure to re-open for further hearing, to accept the clarifying evidence and to rule thereon constitutes a deprivation of due process of law. Respondent respectfully requests that this petition be granted and that the investigation be discontinued since the proponents of the order have failed to meet the burden of proof required by law or, in the alternative, that respondent be given an opportunity, in further hearing, to present to the Commission the matters of law and fact cited herein, as well as in its previous petitions for reconsideration and further hearing.

Since the order of Division 2 becomes effective in March 2, 1975 and TNT cannot physically meet the requirements of the order prior to the effective date petitioner respectfully request a further postponement of 30 days or in the alternative 30 days after disposition by the Commission of this petition.

Respectfully submitted,

H. Neil Garson
Raymond P. de Member

H. Neil Garson
Raymond P. de Member

Attorneys for Respondent
TNT Tariff Agents, Inc.

OF COUNSEL:

Garson, de Member & Weiner
Court Square West Building
1400 North Uhle Street
Arlington, Virginia 22201

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of February, 1975 served a copy of this Petition of Respondent TNT Tariff Agents, Inc., upon parties of record via first class mail postage prepaid.

H. Neil Garson

H. Neil Garson

INTERSTATE COMMERCE COMMISSION
Washington, D. C.

SERVICE DATE
APR 3 1975

March 25, 1975

NO. 35921

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

N O T I C E

A court action, entitled as shown below, was instituted on or about March 20, 1975, involving the above-entitled proceeding:

No. 75-4052

TNT TARIFF AGENTS INC.,
ABC FREIGHT FORWARDER CORP.,
MIDLAND FORWARDING CORP., and
NATIONAL CARLOADING CORP.

v.

UNITED STATES OF AMERICA

before the United States Court of Appeals for the Second Circuit.

ROBERT L. OSWALD,
Secretary

SERVICE DATE
MARCH 24, 1975

ORDER

INTERSTATE COMMERCE COMMISSION

Docket No. 35927

ALLOWANCE FOR DELIVERY OF SHIPMENTS
TO FORWARDER FACILITIES

POSTPONEMENT OF EFFECTIVE DATE OF ORDER

PRESENT: GEORGE M. STAFFORD, Chairman, to whom the above matter, which is the subject of this order, is assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding, including the initial findings and decision of the Administrative Law Judge served March 24, 1974, that the evidence established that the schedules under investigation were shown to be unjust and unreasonable; the decision and order of Review Board No. 4 served July 23, 1974, which adopted the recommended findings of the Administrative Law Judge; the order of the Commission, Division 2, Acting as an Appellate Division, served January 31, 1975, which denied the petition for reconsideration of respondent, TNT Tariff Agents, Inc.; and of the filing of a Petition for Review and a Motion for Stay pendente lite of the Commission's order served January 31, 1975, by the respondent in TNT Tariff Agents, Inc. v. United States of America, et al. (Docket No. 75-4052, U.S. Court of Appeals, Second Circuit);

It appearing, That respondent has requested an order staying the effectiveness of the Commission's order served January 31, 1975, in the above-entitled Court proceeding, and that the Court has scheduled oral argument on the respondent's Motion for Stay for Tuesday, April 1, 1975;

It further appearing, That the effective date of the order should be postponed.

It is ordered, That the order of the Commission, Division 2, Acting as an Appellate Division, served January 31, 1975, shall be, and it is hereby, postponed pending further order of the Commission.

Dated at Washington, D. C., this 21st day of March, 1975.

By the Commission, Chairman Stafford.

ROBERT L. OSWALD
Secretary

(SEAL)

PARTS OF RECORD OF CASE NO. 35921 (SUB NO. 1)

SERVICE DATE

DECEMBER 14 '73

ORDER

INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 8894 (SUB-NO. 1)

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

IN THE MATTER OF DIRECTING MODIFIED PROCEDURE IN THIS PROCEEDING

PRESENT: Virginia Mae Brown, Commissioner, to whom the matter which is the subject of this order has been assigned for action thereon.

It is ordered, That this proceeding be handled under modified procedure; the filing and service of pleadings to be as follows: (a) opening statement of facts and argument by respondent(s) and any parties supporting respondent(s) on or before 20 days from the service date of this order; (b) 30 days after that date, statement of facts and argument by protestant(s) and any supporting parties; and (c) reply by respondent(s) and any supporting parties 0 days thereafter.

And it is further ordered, That protestant(s) shall timely advise respondent(s) and this Commission of the identity, including addresses, of the individuals composing the protestant's(s') defense committee, if any, together with an indication of the number of copies of respondent's(s') statement which are desired, and to whom the copies are to be sent.

Because of the necessity for deciding the issues within the 7-month suspension period, it is contemplated that no recommended report and order will be issued.

Dated at Washington, D.C., this 13th day of December, 1973.

By the Commission, Commissioner Brown.

ROBERT L. OSWALD,
Secretary.

(SEAL)

REPRESENTATIVES OF THE PARTIES

Don R. Devine (Protestant)
Rocky Mountain Motor Tariff Bureau, Inc.
P. O. Box 5746, Terminal Annex
Denver, Colo. 80217

H. G. Roeschke (Respondent)
Freight Forwarders Tariff Bureau, Inc.
140 Cedar St.
New York, N. Y. 10006

F. H. Zentner (Interested Party)
T N T Tariff Agents, Inc.
201 - 11th Ave.
New York, N. Y. 10001

191a

SERVICE DATE

ORDER

DECEMBER 14 73

I

At a Session of the INTERSTATE COMMERCE COMMISSION, Suspension and Fourth Section Board, held at its office in Washington, D. C., on the 12th day of December, 1973.

INVESTIGATION AND SUSPENSION DOCKET NO. 8894 (SUB NO. 1)

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

It appearing, That there have been filed with the Interstate Commerce Commission tariff schedules setting forth new rules, regulations and practices affecting rates and charges, applicable on interstate or foreign commerce, to become effective December 15, 1973, and later, designated as follows:

FREIGHT FORWARDERS TARIFF BUREAU, INC., AGENT,
TARIFF 16-K, I.C.C.-F.F. 206:
In SUPPLEMENT 41, on page 2, in ITEM 520-C,
the provisions of paragraph (g); and,
on page 3, in ITEM 570-F,
Note 1 and the reference thereto;
In SUPPLEMENT 43, on page 3, in ITEM 520-D,
the provisions of paragraph (g); and,
in ITEM 570-G,
Note 1 and the reference thereto;

And it further appearing, That upon consideration of the said schedules and protests thereto there is reason to believe that they would, if permitted to become effective, result in rates and charges, rules, regulations or practices which would be unjust and unreasonable in violation of the Interstate Commerce Act; and good cause appearing therefor:

It is ordered, That an investigation be, and it is hereby, instituted into and concerning the lawfulness of the rules, regulations and practices contained in said schedules and of the rates or charges for services affected by said rules, regulations and practices, with a view to making such findings and orders in the premises as the facts and circumstances shall warrant. In the event the said schedules are changed, amended or reissued upon termination of the suspension period and the investigation having not been concluded, such changed, amended or reissued schedules will be included in this investigation.

It is further ordered, That the operation of the said schedules be and it hereby is suspended, and that the use thereof on interstate and foreign commerce be deferred to and including July 14, 1974, unless otherwise ordered by this Commission.

It is further ordered, That the investigation in this proceeding shall not be confined to the matters and issues hereinbefore stated as the reason for instituting this investigation, but shall include all matters and issues with respect to the lawfulness of the said schedules under the Interstate Commerce Act.

It is further ordered, That neither the schedules hereby suspended nor those sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

And it is further ordered, That a copy of this order be filed with the schedules in the office of the Interstate Commerce Commission, and that copies hereof be served upon the carriers parties to the said schedules and that the said carriers be, and they are hereby, made respondents to this proceeding.

By the Commission, Suspension and Fourth Section Board.

ROBERT L. OSWALD,
Secretary

(SEAL)

☆ U.S. GOVERNMENT PRINTING OFFICE : 1973—728-863/1291 3-1

SERVICE DATE
ORDER DECEMBER 17, 1973

INTERSTATE COMMERCE COMMISSION

No. 35921 (Sub-No. 1)

ALLOWANCE FOR DELIVERY OF SHIPMENTS
TO FORWARDER FACILITIES

IN THE MATTER OF DIRECTING MODIFIED PROCEDURE IN THIS PROCEEDING

PRESENT: Dale W Hardin, Commissioner, to whom the matter which is the subject of this order has been assigned for action thereon.

It is ordered, That this proceeding be handled under modified procedure; the filing and service of pleadings to be as follows: (a) opening statement of facts and argument by respondent(s) and any parties supporting respondent(s) on or before 20 days from the service date of this order; (b) 30 days after that date, statement of facts and argument by protestant(s) and any supporting parties; and (c) reply by respondent(s) and any supporting parties 20 days thereafter.

And it is further ordered, That protestant(s) shall timely advise respondent(s) and this Commission of the identity, including addresses, of the individuals composing the protestant's(s') defense committee, if any, together with an indication of the number of copies of respondent's(s') statement which are desired, and to whom the copies are to be sent.

Dated at Washington, D. C., this 14th day of December, 19 73.

By the Commission, Commissioner Hardin.

ROBERT L. OSWALD
Secretary

(SEAL)

REPRESENTATIVES OF THE PARTIES

RESPONDENT
F. H. Zentner
TNT Tariff Agents, Inc., Agent
201 Eleventh Ave.
New York, N.Y. 10001

INTERESTED PARTY
H. G. Roeschke
Freight Forwarders Tariff
Bureau, Inc.
140 Cedar Street
New York, N.Y. 10006

PROTESTANT
D. Devine
Rocky Mountain Motor Tariff Bureau, Inc.
P. O. Box 5746, T. A.
Denver, Colo. 80217

It is further ordered, That the investigation in this proceeding shall not be confined to the matters and issues hereinbefore stated as the reason for instituting this investigation, but shall include all matters and issues with respect to the lawfulness of the said schedules under the Interstate Commerce Act.

It is further ordered, That neither the schedules hereby suspended nor those sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

And it is further ordered, That a copy of this order be filed with the schedules in the office of the Interstate Commerce Commission, and that copies hereof be served upon the carriers parties to the said schedules and that the said carriers be, and they are hereby, made respondents to this proceeding.

By the Commission, Suspension and Fourth Section Board.

ROBERT L. OSWALD,
Secretary

(SEAL)

☆ U.S. GOVERNMENT PRINTING OFFICE : 1973—728-563/1291 3-1

STATEMENT BY TNT TARIFF AGENTS OPENING STATEMENT OF FACTS AND ARGUMENT

Before The

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 35921 (Sub No. 1)

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

RESPONDENT'S OPENING STATEMENT

OF FACTS AND ARGUMENT

MODIFIED PROCEDURE

Dated: January 3, 1974

Due: January 7, 1974

F. H. Zentner
Vice President
TNT Tariff Agents, Inc., Agent
201 Eleventh Avenue
New York, New York 10001

The matter at issue herein will not affect the quality of the human environment.

RECEIVED

JAN 7 1974

F.E.T.B

Comes now TNT Tariff Agents, Inc., respondent in the above-styled proceeding and files this its opening statement of facts and argument and respectfully says:

STATEMENT OF THE CASE

By publication which became effective September 10, 1973, respondent, in its I.C.C.-F.F. No. 15, published Item 52000 for account of the participant in its tariff. This item provides delivered in or "dock" scales of rates by means of a conversion table on movements where only picked up scales of rates are published. Such "dock" rates are $1.00 per cwt. lower than the picked up scales of rates.

Upon its own motion, the Commission's Board of Suspension instituted an investigation into the lawfulness of the instant tariff matter after the Rocky Mountain Motor Tariff Bureau, Inc., filed a protest against similar matter published by Freight Forwarders Tariff Bureau, Inc. which resulted in I&S Docket No. 8894 (Sub No. 1) Allowance For Shipments Delivered To Forwarder.

By order dated December 12, 1973, the instant proceeding was assigned for handling under modified procedure with respondent's opening statement of facts and argument due January 7, 1974. Respondent herewith submits its statement of facts and argument.

STATEMENT OF F. H. ZENTNER

My name is F. H. Zentner. I am Vice President of TNT Tariff Agents, Inc., and am also Vice President - Traffic of National Carloading Corporation. This freight forwarder is a participant in TNT Tariff Agents, Inc. Tariff I.C.C.-F.F. No. 15. I have had twenty two years experience in the field of traffic and transportation. My duties include, on a regular basis, the analysis of traffic movements, profitability studies and rate comparisons and studies.

Since the matter at issue herein is identical in nature to the schedules covered by the original order in this proceeding, I am attaching herewith as Exhibit No. 1, Respondents Opening Statement of Facts and Argument in Docket No. 35921, ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES.

The statement and argument contained in Exhibit No. 1 apply fully as well in this proceeding. As a matter of fact, in my statement in that pleading I stated at page 6:

> "Although the Eastern Central Motor Carriers Association's protest included only that territory in which its member carriers operated, it should be noted that the provisions here at issue apply throughout the entire United States at each and every terminal of the respondent freight forwarders."

Furthermore, Exhibit No. 1 attached to that pleading contains various comparisons of rate items currently in effect in Trans-Continental Territory with the dock rates here at issue.

It should be noted that in compiling TNT Tariff Agents, Inc. Tariff I.C.C.-F.F. No. 15 here involved, compilers simply reproduced matter already effective in ABC Freight Forwarding Corporation Tariff I.C.C.-F.F. No. 77 and in Midland Forwarding Corporation I.C.C.-F.F. No. 35. Since these two forwarders are also participants in respondent's I.C.C.-F.F. No. 15, it was merely an oversight that the matter here at issue was not symbolized as new matter for the account of National Carloading Corporation.

Protestant, in its petition for suspension, attempts to improperly apply motor carrier costing techniques to freight forwarder operations. Certainly protestant is aware that freight forwarder pick up costs are predicated on the freight forwarders' ability to negotiate a reasonable level of rates with local cartage carriers operating within prescribed exempt zones and with regulated carriers operating outside exempt zones. The cost for pick up is a specific contractual arrangement between the forwarder and the motor carrier. In my opinion the Commission's Statement 201-70 has no relevancy in this proceeding. At page 4 of Exhibit No. 1, attached, I stated that freight forwarder pick up costs, not only within terminal areas but outside of same, have been skyrocketing. The Commission's attention is respectfully directed to the Freight Forwarders initial statement filed in connection with Ex Parte No. proceeding No. 296, PROCEDURES FOR PARTIAL RECOUPMENT OF INCREASED CARRIER LABOR COSTS. This statement was filed on October 3, 1973, on behalf of respondent

freight forwarders to that proceeding. National Carloading Corporation was included as a respondent in that proceeding. Further attention is directed to Exhibit No. 7 of the same pleading which details specific freight forwarder pick up costs and it is clearly indicated therein for the account of TNT's participant here involved, that their pick up costs are in fact skyrocketing and in most cases the cost per hundred weight far exceeds the one dollar reduction here involved. In addition to the rising cost portrayal covering pick up and delivery detailed in Ex Parte 296, the current energy crisis further compounds the problem as all modes of transportation are facing continued rising costs.

I am attaching hereto as Exhibit No. 2 photo copies of additional letters supporting the schedules here at issue. It is evident from these letters that the shipping public's interest would be best served by allowing these provisions to remain in effect. This certainly appears to be in harmony with the National Transportation Policy.

This concludes my testimony and I will be available for cross-examination if requested.

F. H. Zentner

VERIFICATION

State of New York)
New York County) SS:

F. H. Zentner, being duly sworn, deposes and says that he has prepared the foregoing statement and knows the contents thereof and that the same are true as stated.

F. H. Zentner

Subscribed in my presence and sworn to before me the third day of January, 1974.

ARGUMENT

Respondent's argument in its Opening Statement of Facts and Argument in Docket No. 35921, ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES, attached hereto as Exhibit No. 1, is valid in this proceeding as well.

Additionally, it should be reiterated that the assailed schedules result in dock rates and not allowances as referred to by protestant. Allowances in lieu of pick up must be claimed by shippers whereas dock rates here involved will result in savings to shipper or consignee,whoever pays or bears the freight charges. If respondent's participant forwarder is not permitted to offset rising pick up and other costs by rate publications such as the dock rates here at issue, it is clearly evident that higher rate levels would have to be considered which in effect would cause a deterioration in freight forwarder service in various areas of the country due to shippers and receivers of freight using motor carrier service at a lower cost. Such deterioration of service would work to the detriment of all shippers and receivers whom the freight forwarders have served for many, many years and would artificially allocate all such traffic to the motor carrier industry. This would certainly be contrary to the intent of Congress when it established the National Transportation Policy.

Exhibit No. 2, attached hereto, makes clear that the shipping public supports the rate publication here involved. It is also clear that the cancellation of these provisions would likewise force various shippers out of retail markets around the country. Here again, this would be contrary to the National Transportation Policy.

WHEREFORE, in view of all the foregoing facts and argument, respondent should be allowed to maintain the level of rates here under investigation without interruption and the Commission is respectfully urged to discontinue the instant proceeding.

Respectfully submitted,

TNT TARIFF AGENTS, INC.

F. H. Zentner
Vice President
201 Eleventh Avenue
New York, N. Y. 10001

Dated: January 3, 1974

Due January 7, 1974

FHZ/cj

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing first class, postage prepaid, a copy thereof properly addressed to each such party.

Dated at New York, N. Y., this third day of January, 1974.

F. H. Zentner

EXHIBIT NO. 1
DOCKET NO. 35921
(Sub No. 1)

201a

Before The

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 35921

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

RESPONDENT'S OPENING STATEMENT

OF FACTS AND ARGUMENT

Dated: November 9, 1973

Due: Novemver 13, 1973

F. H. Zentner
Vice President
TNT Tariff Agents, Inc., Agent
201 Eleventh Avenue
New York, N.Y. 10001

Comes now TNT Tariff Agents, Inc., respondent in the above-styled proceeding, and files this its opening statement of facts and argument and respectfully says:

STATEMENT OF THE CASE

By publication which became effective September 10, 1973, respondent, in its I.C.C.-F.F. No. 15, published Items 619 and 80040 for account of the participants in its tariff. These items provide delivered in or "dock" scales of rates by means of a conversion table on movements where only picked up scales of rates are published. Such "dock" rates are $1.00 per cwt. lower than the picked up scales of rates.

Upon its own motion, the Commission's Board of Suspension instituted an investigation into the lawfulness of the instant tariff matter after the Eastern Central Motor Carriers Association, Inc. filed a protest against similar matter published by Lifschultz Fast Freight, Inc. which resulted in I&S Docket No. 8894, Allowance For Shipments Delivered To Forwarder.

By order dated October 23, 1973, the instant proceeding was assigned for handling under modified procedure with respondent's opening statement of facts and argument due November 13, 1973. Respondent herewith submits its statement of facts and argument.

STATEMENT OF F. H. ZENTNER

My name is F. H. Zentner. I am Vice President of TNT Tariff Agents, Inc., and am also Vice President - Traffic of ABC Freight Forwarding Corporation, Midland Forwarding Corporation and National Carloading Corporation. These three freight forwarders are participants in TNT Tariff Agents, Inc. Tariff I.C.C.-F.F. No. 15. I have had twenty two years experience in the field of traffic and transportation. My duties include, on a regular basis, the analysis of traffic movements, profitability studies and rate comparisons and studies.

Initially, it is our opinion that the caption "ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDERS FACILITIES" assigned to this proceeding is misleading and tends to cloud the basic issue here involved.

Allowances in lieu of pick up performed have been maintained by freight forwarders as well as motor carriers over the years. Allowances so published require, in addition to detailed record keeping, that the shipper submit a periodic statement for the amount of the allowance so published. Furthermore, such allowances are only paid to shippers located within a terminal area or commercial zone.

The dock rates published by respondent in the instant proceeding have no relationship whatsoever to allowances specifically detailed above. Additionally, unlike allowances, they result in lower freight charges to whoev r pays the freight - not exclusively the shipper.

As cited in Exhibit No. 1, the publication of rates applicable from the terminals or receiving stations (dock rates) of the forwarders participating in respondent's tariff is a well established method of publishing rates. Exhibit No. 1 clearly indicates that a varying dollar difference exists between rates published on various commodities which include the service of pickup and those rates that do not include a pick up service. Specific reference is made to the Freight All Kinds level of rates shown on Exhibit No. 1 as published in Item 506 of Freight Forwarders Tariff Bureau Tariff 35-G, I.C.C.-F.F. No. 222. The dock rate charge of $1225.48 effective from Newark to San Francisco, which does not include the service of pickup, likewise applies only to the freight forwarder's facility in San Francisco and does not include the service of delivery. The normal level of rates which include pickup and delivery using Class 45 as an example, is $1632.00. The difference, therefore, between the pickup and delivered rate is $406.52. Inasmuch as pickup and delivery charges on volume traffic are comparable to each other, it is, therefore, apparent that the shipping public is not only saving $203.26 on the pick up but, a like amount on delivery. Using 24,000 lbs. as a basis, the saving equates to 85¢ per cwt. for pickup and 85¢ per cwt. for delivery. In addition to this level of Freight All Kinds rates, all rates shown in this tariff were under investigation in Docket 35357 which

was prompted by protest filed by the Rocky Mountain Motor Tariff Bureau. A full and complete investigation was made and after consideration of the facts, the Interstate Commerce Commission rendered a decision stating that rates and charges named therein were just and reasonable and were allowed to remain in effect. During this investigation the Rocky Mountain Motor Tariff Bureau, Inc., alleged that these rates would establish a tremendous competitive force and a diversion of traffic, however, to respondent's knowledge, the carriers party to the Rocky Mountain Motor Tariff Bureau have elected not to meet this alleged competition.

Reference is also made to Exhibit No. 1 which depicts a level of rates applying from New York, New York to Los Angeles, California, on a list of commodities referred to as retail merchandise. Considering cotton clothing as an example, which moves in substantial quantities under this rate level, it can be seen that on shipments delivered by shippers in less than truckload quantities of 171 pounds, the rate, not including pickup, is 10.31 per hundred weight, whereas the rate on less than truckload movements of cotton clothing which include pick up, is 17.78, a difference of 7.47 per hundred weight. The need for this type of rate structure was to meet the competition of unregulated pool car distributors and was in no way designed to attract or accomplish diversion from competing regulated modes of transportation.

It should be further noted that TNT Tariff Agents, Inc., Tariff No. 3, I.C.C.-F.F. No. 4, in which respondent freight forwarders participate, names a separate scale of class rates that do not include a pick up (dock rate).

Referring to Exhibit No. 2 appended hereto, it can be seen that this dock rate 205a
structure of class rates which has been effective for years, reduces the rate on less than 500 lbs. between New York and Chicago by 1.02 cwt. on Class 100 traffic which includes pickup. A similar relationship exists on rates published for weights of 500 lbs. and 1,000 lbs.

The cost to respondent freight forwarders for providing pickup service, not only within the terminal area but, outside of same, is skyrocketing as clearly evidenced in Advance Statements of Justification submitted to the Commission in connection with recent general increases sought. This spiraling cost has in most cases exceeded the amount that Freight Forwarders have been able to recoup through general increases, and therefore, it is apparent that this method of publishing rates is vital to our survival and likewise, other innovations must be considered. The instant publication here under investigation has the effect of stabilizing the forwarders' cost of doing business on this segment of our through transportation.

Most freight forwarders, including respondent freight forwarders, provide pickup service within terminal areas through affiliated companies. The normal operation for such pickups is to combine same with deliveries. The local pickup and delivery vehicles are loaded during non-business hours throughout the night and dispatched to effect such deliveries the following morning, the start of the business day. When these deliveries are completed, the pickup operation commences and the vehicles generally return to the forwarder's facility with the freight picked up, at the close of the business day. When pick up is performed by the forwarder in this manner, the freight must be physically checked at the shipper's platform with the driver helping and supervising the loading thereof. This freight must be checked once again upon return to the forwarder's facility prior to being loaded into an outbound linehaul vehicle.

Through application of the rates here involved, when freight is delivered 206a by shipper to the forwarder's facility, only one physical check of the freight is necessary prior to loading into the linehaul vehicle. Secondly, shippers are in a position to secure a possible 24 hour better service, as freight delivered within the normal working hours can be directly loaded for release the same day. The operation of a local pickup service by the forwarder, inasmuch as the pickup trucks arrive after the closing of the business day, usually results in delays in releasing this freight until the following day.

Section 409, Part IV of the I. C. Act, permits freight forwarders to negotiate with motor carriers a rate for performing pickup service outside of the delivery area, less than published tariff rates. It is becoming more and more difficult to maintain a level of pickup cost under Section 409 as many carriers do not wish to provide the service for less than their published tariff rates. As a common carrier, freight forwarders must assess through rates from origin to final destination and without control of our pickup cost and the payment of published tariff rates to provide the service, respondent freight forwarders find that many movements can not return out of pocket expenses. This situation is certainly not unique with the respondent freight forwarders as same is an industry problem.

To further point out that this method of publishing rates is not new, reference is made to respondent ABC Freight Forwarding Corporation, Tariff 9-E, I.C.C.-F.F. 77, Item 619A therein, which has had in effect since July 31, 1972, a period in excess of one year, the same identical provisions here involved. Similar provisions were published by Midland Forwarding Corporation in Item 619-A, Supplement 122 to its I.C.C.-F.F. No. 35, also effective July 31, 1972. Both ABC Freight Forwarding Corporation and Midland Forwarding Corporation operate solely within the territory embraced by motor carriers parties to the Eastern Central Motor Carrier Association and it is difficult for respondents to conceive that no

reference was made in the protest to the Commission concerning this publication. It would appear that the effectiveness of these provisions has in no way affected the traffic flow of the motor carriers as no reference to lost business was furnished, and it is likewise common knowledge within the transportation industry, as well as the Commission, that revenues and profits of the motor carrier industry have increased substantially during this period of time that such dock rates have been in effect. It is, therefore, apparent that dock rates of respondent freight forwarders have in no way caused hardship nor adversely affected motor carriers' profit making capability and it is our belief that a hollow cry for investigation was made merely to stifle competition.

It is likewise evident by the attached photocopies of letters supporting this publication, which are identified by our Exhibit No. 3, that the shipping public's interest would be best served by allowing these provisions to remain in effect. This is certainly in harmony with the National Transportation Policy.

Although the Eastern Central Motor Carriers Association's protest included only that territory in which its member carriers operated, it should be noted that the provisions here at issue apply throughout the entire United States at each and every terminal of the respondent freight forwarders. Respondents have not received any formal opposition to these tariff provisions from any other motor carrier or motor carrier bureau, or any other competing mode of transportation.

This concludes my testimony and I will be available for cross-examination if requested.

_____

F. H. Zentner

VERIFICATION

State of New York)
New York County) SS:

F. H. Zentner, being duly sworn, deposes and says that he has prepared the foregoing statement and knows the contents thereof and that the same are true as stated.

F. H. Zentner

Subscribed in my presence and sworn to before me the ninth day of November, 1973.

The matter here under investigation has been shown, by the figures submitted, not to be an innovation in rate making, dock rates applying from freight forwarders' receiving terminals having been in effect for many, many years.

There is actually no comparison between dock rates here involved and allowances payable to shippers in lieu of pickup performed by a carrier. It is an established principle determined through numerous cases before the Commission that an allowance in lieu of a pick up can only be for the account of a shipper and only those shippers physically located within a commercial zone or terminal area. The dock rate structure here involved established a definite level of rates from respondent freight forwarders' receiving stations and, as such, is made available not only to shippers within a terminal area but, also to those located outside such area and also for the account of consignees. The cry by protesting motor carriers for investigation and possible cancellation of this level of rates is certainly hollow, based on any argument furnished in the initial protest. Respondents have not been made aware throughout all the years that this type of publication has been effective that same has affected traffic via motor carriers. It would seem reasonable that if this method of publication established a competitive force of any value, managerial discretion of the motor carriers would have met this competition.

To prove the point that dock rates are a long established method of rate publication, further reference is made to Exhibit No. 2 which points up differences in excess of $1.00 in the dock rate versus the rate including pickup on shipments of less than 500 pounds.

It is common knowledge that the freight forwarding industry has suffered extreme setbacks financially due to the sweeping loss of traffic to unregulated forms of transportation. If respondents are to survive as well as the freight forwarding industry generally, it must be allowed to provide a level of charges to the shipping public that will allow continued use of freigt forwarder service. A decision by the Commission to find the rates here involved unjust and unreasonable would tend to artificially allocate business to its competitors, whether they be regulated or unregulated. This is certainly contrary to the basic tenets of the National Transportation Policy.

The soundness of this method of rate publication here involved is certainly evident by the support received from the shipping public who are taking advantage of this structure today. Exhibit No. 3 would indicate that the cancellation of these provisions would likewise force various shippers out of retail markets around the country. Here again, this would be contrary to the National Transportation Policy.

In depicting the normal origin terminal operations of a freight forwarder, it is evident that less handling and attendant cost is experience by respondents on traffic delivered to its receiving facility, and shippers likewise secure a generally expedited service inasmuch as freight delivered by the shipper has the availability of same day release to destinations throughout the country.

WHEREFORE, in view of all the foregoing facts and argument, respondents should be allowed to maintain the level of rates here under investigation without interruption and the Commission is respectfully urged to discontinue the instant proceeding.

Respectfully submitted,

TNT TARIFF AGENTS, INC.

F. H. Zentner
Vice President
201 Eleventh Avenue
New York, N. Y. 10001

Dated: November 9, 1973.

Due: November 13, 1973.

FHZ/cj

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing first class, postage prepaid, a copy thereof properly addressed to each such party.

Dated at New York, N.Y., this ninth day of November, 1973.

F. H. Zentner

EXHIBIT No. 1
DOCKET No. 35921

OMMODITY	FROM	TO	DOCK RATES	RATES INCLUDING PICK-UP	TARIFF AUTHORITY
Bottles, glass or metal, insulated and jacketed.	New York, N.Y.	Dallas, Tex.	11.82 - LTL 11.16 - 500 lbs. 9.73 - 1000 lbs. 9.01 - 2000 lbs. 8.08 - 5000 lbs. (1)	12.57 - LTL 12.03 - 500 lbs. 10.39 - 1000 lbs. 9.60 - 2000 lbs. 8.61 - 5000 lbs. (2)	(1) Item 1100-FF18-F I.C.C.-FF-207 (2) I-28660 NMFC A-13 FF59,ICC-FF 190, Sec.9.
Skylights (skylight frames) metal, glazed.	Boston, Mass.	Dallas,Tex.	28.30 - LTL 27.12 - 500 lbs. 23.32 - 1000 lbs. 21.55 - 2000 lbs. 19.25 - 5000 lbs. (3)	28.91 - LTL 27.72 - 500 lbs. 23.86 - 1000 lbs. 22.08 - 2000 lbs. 19.77 - 5000 lbs. (4)	(3) ICC FF 207 Item 2620 - FF-18-F (4) I-37180, MMFCA-13 and FF59,Sec.9 ICC FF No.190
Jugs or Pails, insulated and metal jacketed	St.Louis, Mo.	Dallas,Tex.	4.74 - 4.65 -1500 lbs. 3.87 -5000 lbs. (5)	6.13 - 6.04 - 1500 lbs. 5.01 - 5000 lbs. (6)	(5) ICC FF 207 Item 1600, FF18-F (6) Item 910, 915, FF18-F ICC-FF-207
Retail Mdse. (Clothing, cotton)	New York, N.Y.	Los Angeles, Cal.	10.31 - 171 10.14 - 3000 lbs. 9.95 - 5000 lbs. (9)	17.78 - LTL 14.09 - 500 lbs. 12.68 - 1000 lbs. 11.74 - 5000 lbs. (10)	(9) TNT 2-A ICC-FF 3, Item 1000 (10) Item 9650-FF6-C ICC FF215

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EXHIBIT 1
DOCKET No. 35921

COMMODITY	FROM	TO	DOCK RATES	RATES INCLUDING PICK-UP	TARIFF AUTHORITY
Dry Goods (Retail Mdse.)	New York, N.Y.	Laredo, Texas	9.19 - 350 lbs.(11)	15.68 - LTL 15.02 - 500 lbs. (12)	(11) TNT 2-A ICC -FF-3,Item 110 (12) FF59,Sec. 10 ICC FF No. 190
Notions (Retail Mdse.)	New York, N.Y.	Detroit, Mich.	6.16 - 119 lbs. 5.40 -1000 lbs. 5.05 -2000 lbs. (13)	8.52 - LTL 8.15 - 500 lbs. 7.05 -1000 lbs. 6.49 -2000 lbs. (14)	(13) TNT 2-A ICC FF-3 Item 1205 (14) TNT 3 ICC FF-4
Plastic Articles, NOI 15 lbs. per cu.foot	New York, N.Y.	Los Angeles, Cal.	11.47 - 500 lbs. 10.33 - 1000 lbs. 9.57 - 5000 lbs. (15)	12.47 - LTL 11.22 - 1000 lbs. 10.37 - 5000 lbs. (16)	(15) ICC FF No. 215 Item 7145 - FF 6-C (16) Class 70, Item 1566 NMFC A-13 and FF 2-C ICC FF No. 180
Cleaning Compounds, liquid	New York, New York,	Los Angeles, Cal.	7.80 - 500 lbs. 7.43 - 1000 lbs. 6.55 - 5000 lbs. (17)	9.80 LTL 8.82 - 1000 lbs. 8.16 - 5000 lbs. (18)	(17) Item 3023 FF6-C ICC FF 215 (18) Class 55.Item 48580. NMFC A-13 FF 2-C ICC FF No. 180
Chinaware, Earthenware, Glassware, n/ex 35¢ per lb.	New York, N.Y.	Los Angeles, Cal.	8.05 - 500 lbs. 7.29 - 1000 lbs. 6.74 - 500 lbs. (19)	10.63 - 500 lbs. 9.55 - 1000 lbs. 8.85 - 5000 lbs. (20)	(19) ICC FF No. 215 Item 3000,FF 6-C (20) FF57, ICC,FF 188, CG 270
FAK	Newark, N.J.	San Francisco, Cal.	1225.48 (21) (30,000 lbs. or less)	1632.00 (Class 45 articles at 24,000 lbs. min.)	(21) Item 506 FF 55-G ICC-FF 222

EXHIBIT 1
DOCKET No. 35921

COMMODITY	FROM	TO	DOCK RATES	RATES INCLUDING PICK-UP	TARIFF AUTHORITY
Boots & Shoes NOI	North Haven, Conn.	New Orleans, La.	7.79 - LTL 7.33 - 500 lbs. 6.64 - 1000 lbs. 6.43 - 2000 lbs. 5.36 - 5000 lbs.	8.88 - LTL 8.42 - 500 lbs. 7.71 - 1000 lbs. 7.50 - 2000 lbs. 6.42 - 5000 lbs.	Item 4309 - Midland 9-C ICC-FF-50
	Baltimore,Md.		6.71 - LTL 6.24 - 500 lbs. 5.69 - 1000 lbs. 5.49 - 2000 lbs. 4.56 - 5000 lbs.	7.80 - LTL 7.33 - 500 lbs. 6.76 - 1000 lbs. 6.56 - 2000 lbs. 5.62 - 5000 lbs.	
	New York, N.Y.		7.58 - LTL 7.10 - 500 lbs. 6.46 - 1000 lbs. 6.24 - 2000 lbs. 5.22 - 5000 lbs.	8.67 - LTL 8.20 - 500 lbs. 7.53 - 1000 lbs. 7.31 - 2000 lbs. 6.28 - 5000 lbs.	
Pads or Padding,hair, wool,synthetic plastic,fibre, etc.	Boston,Mass.	Chicago, Ill.	14.62 - LTL 14.01 - 500 lbs. 11.81 - 1000 lbs. 10.42 - 2000 lbs. 9.28 - 5000 lbs. (7)	28.89 A.Q. (8)	(7) Item 5400-Mid 9-C ICC FF 50 (8) I - 149190, NMFC A-13 TNT 3,ICC-FF- 4
		Kenosha, Wisc.	14.62 - LTL 14.01 - 500 lbs. 11.81 - 1000 lbs. 10.42 - 2000 lbs. 9.28 - 5000 lbs. (7)	31.82 - A.Q (8)	

EXPLANATION OF ABBREVIATIONS

FF	Freight Forwarders Tariff Bureau, Inc.
FAK	Freight All Kinds
I	Item
LTL	Less than truck load
lb	Pound
lbs	Pounds
MDSE	Merchandise
Min	Minimum
NMFC	National Motor Freight Classification
NOI	Not otherwise indexed
SEC	Section
TNT	TNT Tariff Agents, Inc.

EXHIBIT No. 2
DOCKET No. 35921

CLASS RATES: New York City, N. Y. to Chicago, Ill. (TNT Tariff Agents,Inc. Tariff No. 3, I.C.C.-F.F. No. 4)

CLASSES

WEIGHT BREAKS	100		92-1/2		85		77-1/2		70	
	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)
L/T 500 lbs.	1021*	919	958*	850	887*	779	819*	714	753*	648
500 lbs.	910	880	847	813	780	747	713	685	650	623
1000 lbs.	781	759	731	701	671	645	615	591	560	532
2000 lbs.	725	701	673	648	619	596	568	546	522	495
5000 lbs.	614	591	566	546	514	496	474	451	429	408

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(1) Rates on shipments when forwarder provides pick-up service.

(2) Rates on shipments delivered directly to forwarder's terminal on which no pick-up service has been provided. On shipments of 500 lbs. or more these rates are superseded by the provisions here at issue. They would be $1.00 less than the rates which include pick-up.

* - Rates for shipments under 500 lbs. include 75 cents per cwt. pick-up charge within New York City (Item 621 series, TNT Tariff Agents, Inc. Tariff No. 14, I.C.C. - F.F. No. 15).

EXHIBIT No. 3
DOCKET No. 35921

BEFORE THE

INTERSTATE COMMERCE COMMISSION

STATEMENT OF SUPPORT

SUBJECT: I.C.C. ORDER NO. 35921 - OCTOBER 24, 1973
ALLOWANCE FOR DELIVERY OF SHIPMENTS
TO FORWARDER FACILITIES

TO: ROBERT L. OSWALD, SECRETARY

Gentlemen:

Comes now the F. W. Woolworth Co., Northeastern Regional Office, located at 233 Broadway, New York, NY 10007, hereinafter called Woolworth, which maintains 265 retail variety and general merchandise chain stores in the New England and metropolitan New York area, with a statement in support of respondent, TNT.

STATEMENT OF SUPPORT

Woolworth has, since May, 1973, specified the use of TNT's "Dock Rate" service from the vendors whose terms of sale are "F.O.B. Cincinnati, Ohio, Milwaukee, Wisconsin, Minneapolis, Minnesota or St. Paul Minnesota." Briefly, Woolworth's shipping instructions to these vendors specify that all consolidated shipments consigned to F. W. Woolworth Co. in Boston, Mass., Glendale, NY, Jersey City, NJ or Newark, NJ are to be delivered to Abco Terminal Company at a specified address in the city of origin. Woolworth has, since the issuance of the above instructions, enjoyed the benefits of TNT's service from the origins named to the Woolworth consolidator destinations named and has found such service, and covering rates, to be beneficial and economical. In addition, Woolworth plans to expand its use of TNT's "Dock Rate" service to additional origin cities in the near future, on the basis of its satisfaction with the rates and service currently effective for the four (4) origin cities named above.

Respectfully submitted,

J. F. NEUBAUER
REGISTERED PRACTITIONER
REGIONAL TRAFFIC MANAGER
F. W. WOOLWORTH CO.

DATED AT NEW YORK, NEW YORK
NOVEMBER 8TH, 1973

EXHIBIT No. 3
DOCKET No. 35921

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DRESSER

HAND TOOL DIVISION
DRESSER INDUSTRIES, INC
3535 WEST 47TH STREET • CHICAGO, ILLINOIS 60632 • (312) 523-1300

October 30, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C.

Subject: Order No. 35921 dated 10/24/73

Gentlemen:

We endorse ABC-TNT's stand in reducing rates based on delivery into their terminal.

We have been using Common Carriers over the years; however, due to the rising rates we have been forced to seek better rates so that we can remain competitive with our products. Our solution to this problem has been to ship via Associations which offer lower rates.

We did not want to divert from Common Carriers, but in order to remain competitive we have been forced into these drastic measures.

At this point, we have diverted 350,000 lbs. per month.

Very truly yours,

DRESSER HAND TOOL DIVISION

George W. Fogel

George W. Fogel
Traffic Manager

GWF:i

EXHIBIT NO. 3
DOCKET NO. 35921

Wilson Pharmaceutical & Chemical Corporation
Prudential Plaza · Chicago, Illinois 60601 · 312-527-5410

Frank A. Disviscour
General Traffic Manager

Oct. 30, 1973

Mr. Robert L. Oswald
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Interstate Commerce Commission
RE: Order No. 35921
DATE: 10/24/73
"Allowance for Delivery of
Shipments to Forwarder Facilities"

Dear Mr. Oswald;

Wilson Pharmaceutical & Chemical Corporation is a corporation with headquarters here in Chicago which utilizes the services of Trans National Transport to a great number of destinations in the United States. We use this carrier because of their expedicious service and the fact that they use piggy-back service which, in our estimation, is helping the energy crisis by keeping the long-haul truckers off the roads and conserving fuel.

It is our intention to reduce our overall costs by availing ourselves of the $1.00 per cwt allowance published in the regulatory tariffs which Trans National Transport participates. This reduction of $1.00 per cwt in the overall rate would be a definite advantage to ourselves in this competitive market and would help justify our private fleet of 50 trucks in the Chicago Area.

With freight rates constantly on the increase, labor costs at the highest level in years and raw material either unavailable or at much higher prices it behooves us in the traffic profession to use every means possible to reduce our freight costs.

Therefore, Wilson Pharmaceutical & Chemical Corporation respectfully requests that the $1.00 per cwt allowance be allowed to remain in the tariff and any protests to its removal be disallowed.

Respectfully submitted,

F. A. Disviscour

F. A. Disviscour

220a

EXHIBIT No. 3
DOCKET No. 35921

KIRCHHEIMER BROTHERS CO.
ESTABLISHED 1894
429-445 WEST OHIO STREET
TELEPHONE - AREA CODE 312 - 321-9200
CHICAGO, ILLINOIS 60610

October 29, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington 25, D. D.

Re: Subject order No. 35921 of 10/24/73

Gentlemen:

In order for us to remain competitive in the coastal area, we need a freight incentive which we can pass on to our customers.

Therefore, we are in full support of subject order No. 35921.

Sincerely yours,

KIRCHHEIMER BROTHERS CO.

Leonard Greenberg
Traffic Manager

LG/rmm

221a

EXHIBIT No. 3
DOCKET No. 35921

HART SCHAFFNER & MARX CLOTHES
36 South Franklin Street, Chicago, Illinois 60606
(312) FRanklin 2-6300

October 26, 1973

Mr. Robert L. Oswald, Sec.
Interstate Commerce Commission
Washington, D.C.

RE: Ord #35921 of 10-24-73

Dear Mr. Oswald:

The reduction in rate by delivering into the TNT Terminal will allow us to remain in the markets they serve, primarily the west coast.

We feel that this rate is to our economic advantage and will help us not to raise the prices on the clothing that we manufacture.

Sincerely yours,

JCWaters

J.C. Waters

JCW:pfg

EXHIBIT No. 3
DOCKET No. 39921

advance PROCESS SUPPLY COMPANY

the first name in screen printing colors, supplies, & equipment

IPMENT
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and-Cut Screens
hotography
ypesetting
rt & Layout
echanical Art
tep & Repeat

October 26, 1973

Mr. Robert L. Oswell
Interstate Commerce Commission
WASHINGTON, D.C.

Subject: Order No. 39921 - 10/24/73

Dear Mr. Oswell:

In order for us to remain competitive, it is necessary for us to take advantage of the delivered in rates offered by Trans National Transport.

We have been able to maintain a lid on our commidity in this area by utilizing this lower delivered in rate. We sincerely hope this rate will remain in effect.

Thank you for your assistance in this matter.

Yours truly,
ADVANCE PROCESS SUPPLY COMPANY

Daniel J. Pietr
Traffic Manager

DJP/jnp

EXHIBIT No. 3
DOCKET No. 35921

John Hancock 223a

October 29, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C.

Dear Mr. Oswald

We have been utilizing the service of Trans National Transport to all our stores and warehouses in the States of Penna., New Jersey, Delaware and New York as provided in their tariff, T.N.T. #14, items 619 and 80040, and therefore, hope that these provisions will not be removed as the result of I.C.C. order 35921.

The savings that we have been able to effect in our transportation costs have helped us to maintain our competetive position in these times of rising prices and costs.

We would strenuosuly object to the withdrawl of these rates and the economic benefits accruing to our Company.

Thank you for your consideration.

Sincerly

A.F. Adukaitis
Traffic Manager

1515 BROADWAY • TIMES SQUARE
NEW YORK • NEW YORK • 10036

224a .

EXHIBIT No. 3
DOCKET No. 35921

T. GRANT
OMPANY

ECUTIVE OFFICES

November 6, 1973

Interstate Commerce Commission
Constitution & 12th Street
Washington, D. C. 20423

ATTENTION: Mr. Robert Oswald, Secretary

Ref. I.C.C. Docket No. 35921

Dear Mr. Oswald:

The W. T. Grant Company wishes to go on record in support of Trans National Transport's one dollar allowance for delivery of shipments to freight forwarder's facilities.

This allowance is a greater inducement for shippers to deliver their shipments to the freight forwarders, thus easing some of the critical problems of pick-ups within the congested New York City area.

Very truly yours,

C. W. Berger, General Traffic Mgr.
W. T. Grant Company

RK/mc

EXHIBIT No. 3
DOCKET No. 35921

JCPenney

November 7, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C.

Service Order #35921

Dear Mr. Oswald:

With reference to subject order we find Trans National Transports $1.00 reduction on traffic delivered to their origin stations to be beneficial and economical to the J. C. Penney Company and respectfully request that it continue to remain in effect.

Very truly yours,

J. C. PENNEY COMPANY, INC.

W A Deehan

W. A. Deehan
Traffic Division
Distribution Dept.

WAD:jc
Attachment

226a

EXHIBIT No. 3
DOCKET No. 35921

SINCERELY YOURS...

Brushes by Baker!

November 7, 1973

ROBERT Z. OSWALD, SEC'Y.
I C C
Washington, D. C.

Re: ICC order #35921

Dear Sir:

We have used Trans National Transport lower rates on Delivered In Merchandise from time to time, and consider this rate vital in today's competitive market.

Very truly yours,

BAKER BRUSH CO., INC.

Joseph Sclafani

Joseph Sclafani

JS/h

Cable Address: BAKOBRUSH

Area Code 212 CAnal 6-1774

EXHIBIT No. 3
DOCKET No. 35921

Goody®
THE LEADING NAME IN HAIR ACCESSORIES

H. GOODMAN & SONS, INC. 227a
969 NEWARK TPKE., KEARNY, N. J. 07032 / T CELCOMB / TELEX: GOODY KRNY 138547 / (201) 997-3000

November 2, 1973

Interstate Commerce Commission
Washington, D.C.

Attn: Robert L. Oswald, Secretary

SUBJECT: I.C.C. ORDER #35921

Gentlemen:

We have been using the consolidating service of Trans-National Transport for shipments to the Pacific Coast.

By delivering our shipments to this carrier, instead of waiting for pick ups, we have improved service, as compared to the forwarder which we previously used.

Since our products are low priced & their rates lower than we were paying we have improved our competitive position.

Very truly yours,
H. Goodman & Sons, Inc.

William Jacobs
Traffic Manager

WJ:me

EXHIBIT No. 3
DOCKET No. 35921

Leader CARDS * INC.
CONVERTERS OF FINE CARDS AND ENVELOPES
835 SOUTH FIFTH STREET P.O. MILWAUKEE, WISCONSIN 53204
(414) 645-5760

November 5, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Division
Washington, D.C.

Subject: Order No. 35921 dated 10/24/73

Dear Sir:

It is our intention in the near future to use the freight allowance on delivered freight to Trans National Transport's dock in order to take advantage of the lower rate for such service.

It would be to our advantage to have this lower rate in order to keep the cost of shipping to the coast as competitive as possible.

We sincerely hope that this rate will remain in effect for the aforementioned reason.

Yours very truly,

LEADER CARDS, INC.

Stan Catarczoli

Stan Catarczoli
Traffic Manager

SC/mn

NOV 7 1973

229a

EXHIBIT No. 3
DOCKET No. 35921

CHEMTRONICS INC. 1260 RALPH AVENUE, BROOKLYN, N. Y. 11236

November 5, 1973

Interstate Commerce Commission
Washington,
D.C.

Attention: Mr. R.L. Oswald, Secy.

RE: Interstate Commerce Commission
Order #35921

Dear Mr. Oswald:

We have utilized the ABC TNT delivered in dock rate structure and have found it to be very beneficial to us in that it has kept our freight charges at a lower level.

We still intend to use this service afforded us by ABC TNT, and hope that this service will be kept intact.

Thank you.

Cordially yours,

CHEMTRONICS INC.

Al Friedman
AF/ab

EXHIBIT No. 3
DOCKET No. 35921

Tensor Corporation
333 Stanley Avenue
Brooklyn, N. Y. 11207
(212) 649-2000
Cable Address:
TENSORLAMP, Brooklyn, N.Y.

tensor

November 7, 1973

Interstate Commerce Commission
Washington, D.C.

ATT: Mr. R. L. Oswald, Secretary

RE: Interstate Commerce Commission Order #35921

Dear Mr. Oswald:

During the past year, we have used the ABC TNT delivered in dock rate set-up, and have found it very useful to us in that it has kept the ever-rising freight costs at a minimum.

It is our intention to utilize this service presently and in the near future, and we hope this service will remain in tact.

Thank you.

Cordially yours,

George Sulkes

Traffic Manager

231a

EXHIBIT NO. 5
DOCKET No. 35921

HERMAN H. SMITH INC.

Manufacturers of
Electronic Components

812 SNEDIKER AVENUE - BROOKLYN, N.Y. 11207
AREA CODE 212 272-9400

November 5, 1973

Interstate Commerce Commission
Washington, D.C.

Attention: Mr. R. L. Oswald, Secretary

Subject: Interstate Commerce Commission Order #35921

Dear Mr. Oswald:

Since its existence, we have used the ABC TNT dock rate structure and have found it very beneficial since freight charges remained at a lower level.

It is our intention to retain the service afforded us by ABC TNT, and we hope this same service will remain as is.

Thank you.

Cordially yours,

Traffic Manager

232a

EXHIBIT No. 3
DOCKET No. 35921

Sandel MARBLE CO., INC.
Manufacturers of Cultured Marble, Custom Vanity and Table Tops
403 MIDLAND AVENUE — BOX 1044
WAUKESHA, WIS. 53186, PHONE (414) 547-6866

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commision
Washington, D. C.

Subject: Order No. 35921 dated 10/24/73

Dear Sir:

In order for us to remain competitive with our products, it is necessary for us to take advantage of Trans National Transport's delivered-in rates.

Every effort is being made by our company to hold the price line. One way to achieve this goal is to take advantage of this lower rate.

We sincerely hope this rate will remain in effect.

Bill Koch
Traffic Mgr.

EXHIBIT No. 3
DOCKET No. 35921

233a

THE AA WORKHORSE

AA Laundry Machinery Co.

- MANUFACTURING
- REBUILDING
- SERVICING

MEMBER: AMERICAN INSTITUTE OF LAUNDERING — N.I.C.D. and L.C.A.T.A.

Commercial Dry Cleaning and Laundry Machinery • [illegible] Kedzie Ave. • CHICAGO, ILL. 60612

October 29, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C.

Subject: Order No. 35921 dated 10/24/73

Dear Sir:

In Order for us to remain competitive with our products in the Western Coastal area, it is necessary for us to take advantage of Trans National Transport's delivered-in rates.

Every effort is being made by our company to hold the price line. One way to achieve this goal is to take advantage of this lower rate.

We sincerely hope this rate will remain in effect.

Very truly yours,

AA LAUNDRY MACHINERY CO.

Phillip Zaban

Phillip Zaban - Ptr.

EXHIBIT No. 3
DOCKET No. 35921

TEE-PAK, INC.
A SUBSIDIARY OF CONTINENTAL CAN CO., INC.

2 North Riverside Plaza / Chicago, Illinois 60606 / (312) 782-2020 / Cable Address "TEEPAK" Acme Code

Executive Offices

November 2, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C.

Reference: Order No. 35921 dated 10/24/73

Dear Sir:

We strongly urge that the delivered-in rates provided by Trans National Transport will remain in effect.

Since we perform a service that would normally be done by TNT when we tender shipments to their terminal facilities, we believe there should be a benefit to our company for providing this service.

By use of their delivered-in rates, it has enabled us to reduce our transportation costs and is mutually beneficial to our customers in holding our price ranges.

Very truly yours,

TEE-PAK, INC.

W. L. Weart

W. L. Weart
Traffic Manager

cc: J. O'Connell, TNT

EXHIBIT No. 3
DOCKET No. 35921

STRAWBRIDGE & CLOTHIER
MARKET AND FILBERT AT EIGHTH, PHILADELPHIA, PA. 19105

November 1, 1973

Interstate Commerce Commission
Washington, D. C.

Att: R. L. Oswald, Secretary
Re: ICC Order 35921,10/24/73

Gentlemen:

We have in recent weeks been preparing routing instruction letters to our various suppliers so that we might enjoy the savings that would be afforded by Trans National Transport's tariff, TNT 14, items 619 and 80040.

The rates provided in the above mentioned tariff are needed to help us maintain a sound position in the highly competetive retail market today.

We urge that ICC order 35921 not be allowed to remove those anticipated savings in transportation costs.

Very truly yours,

STRAWBRIDGE & CLOTHIER

Frederic Wiggins

FREDERIC WIGGINS
Traffic Manager

FW:s

EXHIBIT No. 3
DOCKET No. 35921

ESTABLISHED 1888
H. FREEMAN & SON
INCORPORATED
33 RD & ARCH STREETS
PHILADELPHIA, PA. 19104

NEW YORK OFFICE
1290 AVENUE OF THE AMERICAS

Nov. 1, 1973.

Robert L. Oswald, Secy.,
The Interstate Commerce Commission,
Washington, D. C.

Dear Sir:

Re: TransNational Transport Inc. Tariff TNT #14,
Items 619 and 80040.

ICC Order 35921

Application of subject dock rates has enabled us to save enough money to maintain certain markets which otherwise would have been almost impossible to service otherwise, with costs rising as they are.

Please accept this letter as our very emphatic protest against any suspension or cancellation of these rates.

Very truly yours,

H. FREEMAN & SON

By _____
Charles DeMatteo
Traffic Supervisor.

EXHIBIT No. 3
DOCKET No. 35921

G. J. AIGNER COMPANY 426 South Clinton Street Chicago, Illinois 60607 427 7411

November 1, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C.

Re: Order No. 35921 dated October 24, 1973

Gentlemen:

The rate reduction by delivering in freight to Trans National Transpo dock has been a big help in keeping our costs down and still remain co petitive in our line of business.

As you know, freight rates are continually rising and labor costs are on the same level with rates. In order to stay in business we must take advantage of any and all means to reduce our costs and still make a profit.

We respectfully request that the ICC rule in favor of allowing the $1.00 per cwt. delivered-in rate to remain in TNT Tariff No. 14.

Very truly yours,

G. J. AIGNER COMPANY

Richard Yasak
Traffic Manager

RY:mdf

EXHIBIT No. 3
DOCKET No. [illegible]

GOURMET LIMITED
376 E. ST. CHARLES RD. LOMBARD, ILL. 60148 • 312 627-1666

November 1, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C.

Subject: Order No. 35921 dated 10/24/73

Dear Sir:

In order for us to remain competitive with our products in the Western Coastal area, it is necessary for us to take advantage of Trans National Transport's delivered-in rates.

Every effort is being made by T.N.T. to hold the price line. One way to achieve this goal is to take advantage of this lower rate.

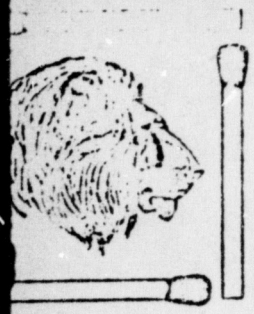
It would be of benefit to us and to our customers if this low rate will remain and will be approved by your office.

Very truly yours,

Robert B. Lurski, President
Gourmet Limited

RBL:mp

EXHIBIT No. 3
DOCKET No. 35921



The Lion Match Corporation of America
Manufacturers of Advertising Book Matches
General Offices: 3433 West 48th Place, Chicago, Illinois 60632 Phone (312) 847-2244

October 30, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C.

Subject: Order No. 35921 dated 10/24/73

Dear Sir:

In order for us to remain competitive with our products in the Western Coastal area, it is necessary for us to take advantage of Trans National Transport's delivered -in rates.

Every effort is being made by our company to hold the price line. One way to achieve this goal is to take advantage of this lower rate.

We sincerely hope this rate will remain in effect.

Very Truly Yours,

Stanley Ziemba

SZ/ib

Stanley Ziemba,
Traffic Manager.

EXHIBIT No. 3
DOCKET No. 35921

1900 LOWER ROAD • LINDEN, NEW JERSEY 07036 • 201-574-0300
PRODUCTS, INC.

October 30,1973

Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C.

Dear Sir:

Reference is made to Service Order #35921 of October 24th investigating Trans National Transport's $1.00 per cwt. freight rate reduction on delivered in traffic.

We find this rate to be beneficial to our company and and hereby ask that this provision not be distrubed.

Very truly yours,

Victor Mendez
Traffic Manager

EXHIBIT No. 3
DOCKET No. 35921

the hecht co

F ST. AT SEVENTH, N. W., WASHINGTON, D. C. 20004

November 5, 1973

Interstate Commerce Commission
Washington, D. C.

Attention: Robert L. Oswald, Secretary

Ref: Order No. 35921

Dear Mr. Oswald:

The Hecht Company supports the reduction in rates for shipments received into consolidation by ABCO for forwarding to our company as it represents a great savings for our company.

Under shipping terms of F.O.B. Chicago our shippers are obligated to deliver free of charge to any point within the commercial zone of Chicago and since this method of shipping results in a reduced cost to the forwarder by not performing a pick-up service, we feel this savings should be passed on to our company in the form of a rate reduction.

Very truly yours,

THE HECHT COMPANY

W. O. Rockwell
Traffic Manager

WOR/tb

cc: 1

EXHIBIT No. 3
DOCKET No. 35921

242a

Area Code [illegible]

Products
INC

Leading Manufacturers of Casual Furniture . . .

Indoors and Outdoors

Tulip & Westmoreland Sts. - Philadelphia, Pa. 19134
Cable Address: "ALLUM"

October 30, 1973

Mr. Robert L. Oswald
Interstate Commerce Commission
Washington, D. C.

Dear Mr. Oswald:

We have been utilizing the services of Trans National Transport as provided for in their Tariff, TNT #14, items 619 and 80040, and therefore, hope that these provisions will not be removed as a result of ICC Order 35921.

In view of the rising prices and transportation costs, we feel that the saving is beneficial to the Shippers in maintaining a competitive and selling position.

We would strenuously object to the withdrawal of these rates.

Thank you for your consideration.

Very truly yours,

JOHN S. ZAVASKY
Traffic Manager

ml

EXHIBIT No. 3
DOCKET No. 35921

DENTAL MFG. COMPANY, INC.

900 NORTH FRANKLIN STREET • CHICAGO, ILLINOIS 60610

Phone: 664-6370 Area Code 312

Nov 5,1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C.

Subject: Order No. 35921 dated 10/24/73

Dear Sir:

In order for us t o remain c ompetitive with our products in Western c oastal Areas, it is necessary f or us t o take advantage of Trans-Nationals Transp ort delivered in rates.

Every effort is being maDE BY OUR COMPANY to hold the price line. One way to acheive this goal is to take advantage of this lower rate.

We sincerely hope this rate will remain in effect.

Sincerely,

Edward M. Lang

Edward M.Lang, Pres.

244a

fine photographic equipment

EXHIBIT NO. 3
DOCKET No. 35921

Burke & James inc.

333 W. LAKE ST. CHICAGO, ILL. 60606 312/372-5422

Nov. 5, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C.

Subject: Order No. 35921 dated 10/24/73

Dear Sir:

In order for us to remain competitive with our products in the Western coastal area, it is necessary for us to take advantage of Trans National Transport"s delivered-in rates.

Every effort is being made by our company to hold the price line. One way to achieve this goal is to take advantage of this lower rate.

We sincerely hope this rate will remain in effect.

MacArthur Antigua
Traffic Supervisor

BURKE & JAMES, INC.

EXHIBIT No. 3
DOCKET No. 35921

AMERICA'S LARGEST SPECIALISTS IN PRINTED SCHOOL FORMS

SCHOOL SERVICE COMPANY, INC.

Established 1923

157 WEST ONTARIO STREET • CHICAGO, ILLINOIS 60610 • TELEPHONE DELAWARE 7-6033

Nov. 5, 1973

. Robert L. Oswald, Secretary
terstate Commerce Commission
shington, D. C.

bject: Order No. 35921 dated 10_24_73

e Sir:

rder for us to remain competitive with our products in the western
stal area, it is necessary for us to take advantage of Trans Continental
nsport's delivered in rates.

ery effort is being made by our company to hold the price line. One way
achive this goal is to take advantage of this lower rate.

sincerely hop this rate will remain in effect.

Sincerely,

McAlister J Merchant
School Service Company, Inc.

246a

244 MADISON AVENUE • NEW YORK, NEW YORK 10017

EXHIBIT No. 3
DOCKET No. 35921

NORCROSS
INC.

November 5, 1973

The Interstate Commerce Commission
Washington, D. C.

Attention: Robert L. Oswald, Secy.

Dear Sir:

This letter has reference to I.C.C. Ord. #35921.

We have been enjoying a Dock Rate thru the services of TNT here in New York City. The Dock Rate has been a great help in our ability to meet competition from other companies in the mid-west who are closer to our customers.

NORCROSS INC. would like very much and implore you to do whatever has to be done to see that the TNT Dock Rate continues.

Sincerely,

NORCROSS INC.

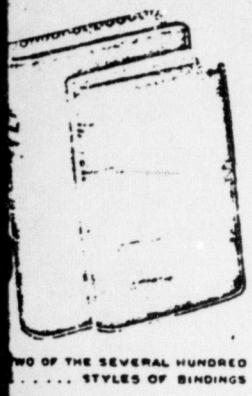
James V. Pareso

James V. Pareso
Traffic Manager

JVP/es

247a

EXHIBIT NO. 2
DOCKET NO. 35[illegible]
(Sub No. 1)



CATHOLIC BOOK PUBLISHING CORP.

PRAYER BOOKS BIBLES BOOKS ART

ORIGINATORS IN PRINTCRAFT

257 WEST 17TH STREET
BET. SEVENTH AND EIGHTH AVENUES
NEW YORK, N.Y. 10011

TELEPHONE { 45[illegible]5
CHELSEA 3 / 45[illegible]6
45[illegible]7

CABLE ADDRESS
"CAVROBOOK
NEW YORK

TWO OF THE SEVERAL HUNDRED ..... STYLES OF BINDINGS

November 7, 1973

Interstate Commerce Commission
Washington, D. C.

Att: Mr. Robert L. Oswald
Secretary

Ref: ICC order 35921

Gentlemen:

We are in the process of revamping our delivery departmen so that we may take advantage of Trans National Transport lower rate of $1.00 per 100 lbs. when merchandise is delivered to their terminal.

We feel that the lower rate based on our delivery to the above mentioned carrier's terminal, will be beneficial not only to us but to our many customers who request freight shipments.

Yours very truly,

CATHOLIC BOOK PUBLISHING CORP.

Louis A. Marrero

Louis A. Marrero

LAM/ss

248a

EXHIBIT NO. 2
DOCKET NO. 359.
(Sub No. 1)

THE ORCHARD CORPORATION OF AMERICA

November 8, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C.

Dear Mr. Oswald:

In the matter of the Interstate Commerce Commission Order No. 35921, be advised that the, THE ORCHARD CORPORATION OF AMERICA, has a need for the rates that are being questioned. Be advised that the rates are of a competitive help in the operation of our business.

It is by this letter that I am requesting that these rates be left standing.

Your very truly,

Jil Bilderback
TRAFFIC MGR.

NOV 9 1973

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

T. YORK COMPANY, / *general office and plant 440 east helm street brookfield, missouri 64628 / (816) 258-2291

October 31, 1973

Mr. Robert L. Oswald
Secretary
Interstate Commerce Commission

Dear Mr. Oswald:

In regards to order number 35921, I would like to make a statement on behalf of the respondent. Our Company has a great need for the rates the respondent has. These rates allow us to serve areas of the country with quality products at a competitive price. Without these rates, we could not serve these areas; resulting in less competition and less choice for the consumer.

I urge you to allow these rates to stand.

Yours truly,

James Kallaher

James Kallaher
Vice President Operations

JK/mc

250a

Cable Address: PERLCO

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

The Perlick Company, Inc.

Brewery Fittings
Beverage Dispensing Equipment

Mailing Address P.O. Box 8128, Milwaukee, Wis. 53223
8300 West Good Hope Road • Phone (414) 353-7060

November 8, 1973

Robert Oswald, Secretary
Interstate Commerce Commission
Washington, D.C.

Dear Mr. Oswald:

SUBJECT: Order #35921, Dated 10/24/73

In order for us to remain in a competitive position with our products, it is necessary for us to use every cost saving measure possible. One of them is the Trans National Transport delivered in rates.

We would like to state that we wholeheartedly support your continuing to allow these rates to be in effect.

Sincerely yours,

THE PERLICK COMPANY

Gordon J. Ketchman

Gordon J. Ketchman
Assistant Traffic Mgr.

GJK:bjg

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

APECO

November 8, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington D. C.

Dear Mr. Oswald:

In this day of rising prices it is most gratifying to know that a shipper can avail himself of good service and still do it at a reduced cost. I am referring specifically to the new rate concept initiated by Trans National Transport wherein a shipper can reduce his freight expenditures by taking advantage of their delivered-in rates.

Rest assured that we will avail ourselves of this service and cost reduction as failing to do so would certainly not be in the best interests of our firm.

Very truly yours,

J. J. Miller
Traffic Manager

JJM/me

252a

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

Norton Metals Division
152 Claremont St.
Newton, Ma.

November 12, 1973

Mr. Russell G. Oswald
Interstate Commerce Commission
Washingtom, D.C.

Dear Mr. Oswald,

This letter is in regards to the discount rate dock to dock of Trans National Transport Tariff # 14. From using this rate I have derived a considerable amount of savings on my "long-haul" shipments to the west coast areas.

The utilization of this rate has enabled me to defray the ever increasing shipping charges and to enhance the competitive distribution of my product to the west coast regions.

Sincerely yours,

Joseph G. Saia

Joseph G. Saia
Traffic Supervisor

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

DIVISION OF UP-RIGHT, INC.

SUBJECT: Docket No. 35921

November 12, 1973

Interstate Commerce Commission
Washington, D.C.

Attention: Mr. Robert L. Oswald

Dear Mr. Oswald:

Be advised that the delivered-in-dock rate published by Trans National Transport in Tariff 14, Items 619 and 8004, is most beneficial.

The need for this type of dollar-saving rate is great. With the continuous rise in freight rates, it is becoming increasingly more ditficult to serve a market area economically.

I highly recommend the retention of the rates in question.

Yours very truly,

UP-RIGHT SCAFFOLDS

Frank H. Walrond

Frank Walrond

FW:mk

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

HURRICANE INTERNATIONAL
PRODUCTION FACILITY

2500 – 14TH STREET OAKLAND, CALIFORNIA 94607
TELEPHONE – (415) 444-0[illegible]

November 12, 1973

SUBJECT: Docket No. 35921

Interstate Commerce Commission
Washington, D.C.

Attention: Mr. Robert L. Oswald

Dear Mr. Oswald:

Be advised that the delivered-in-dock rate published by Trans National Transport in Tariff 14, Items 619 and 8004, is most beneficial.

The need for this type of dollar-saving rate is great. With the continuous rise in freight rates, it is becoming increasingly more difficult to serve a market area economically.

I highly recommend the retention of the rates in question.

Yours very truly,

Hurricane International

Charles Aegliar

CA:mk

255a

EXHIBIT NO. 2
DOCKET NO. 3592
(Sub No. 1)

Sonneborn Building Products Division • CONTECH INC.
330 BRUSH STREET
OAKLAND, CA 94607
(415) 839-1710

November 12, 1973

Re: Docket No. 35921

Interstate Commerce Commission
Washington, D.C.

Attention: Mr. Robert L. Oswald

Dear Mr. Oswald:

Be advised that the delivered-in-dock rate published by Trans National Transport in Tariff 14, Items 619 and 8004, is most beneficial.

The need for this type of dollar-saving rate is great. With the continuous rise in freight rates, it is becoming increasingly more difficult to serve a market area economically.

I highly recommend thr retention of the rates in question.

Yours very truly,

SONNEBORN-CONTECH

Marv Cordell
Manager

MC:mk

256a

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

Superior
STRUT & HANGER CO.
845 Embarcadero • Oakland, Ca 94606
Telephone (415) 839-9690

November 12, 1973

SUBJECT: Docket No. 35921

Interstate Commerce Commission
Washington, D.C.

Attention: Mr. Robert L. Oswald

Dear Mr. Oswald:

Be advised that the delivered-in-dock rate published by Trans National Transport in Tariff 14, Items 619 and 8004, is most beneficial.

The need for this type of dollar-saving rate is great. With the continuous rise in freight rates, it is becoming increasingly more difficult to serve a market area economically.

I highly recommend the retention of the rates in question.

Yours very truly,

Superior Strut & Hanger Co.

Tom Pletcher

Tom Pletcher

TP:mk

CURTIS INDUSTRIES, INC.
division of CURTIS NOLL CORPORATION
34999 Curtis Boulevard Eastlake, Ohio 44094
Telephone (216) 946-2400

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

Re: Docket No. 35921

November 12, 1973

Interstate Commerce Commission
Washington, D.C.

Attention: Mr. Robert L. Oswald

Dear Mr. Oswald:

Be advised that the delivered-in-dock rate published by Trans National Transport in Tariff 14, Items 619 and 8004, is most beneficial.

The need for this type of dollar-saving rate is great. With the continuous rise in freight rates, it is becoming increasingly more difficult to serve a market area economically.

I highly recommend the retention of the rates in question.

Yours very truly,

CURTIS INDUSTRIES, INC.

Dwight Newenschwander

DW:mk

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

DEL-MET WESTERN, INC.

DIV. OF DEL-MET CORP

WESTERN OFFICE
O. BOX 45615
S ANGELES, CALIF. 90045
ONE 213-776-3232

MAIN OFFICES
44 WEST STREET
WALTON, NEW YORK 13856
PHONE 607-865-4141

October 31, 1973

Interstate Commerce Commission
Washington, D.C.

Re: Docket No. 35921

Attn: Mr. Robert L. Oswald

Dear Mr. Oswald,

We are in complete support of Trans National Transport's dock rate reduction per Items 619 and 80040 in T.N.T. Tariff No. 14, I.C.C. - F.F. No. 15.

With the rising cost in transportation this would represent considerable savings to our company.

Very truly yours,

Jean Santoni,
Manager
DEL-MET WESTERN, INC.

JS:cal

MEMBER

259a

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

he G.C. BREIDERT co.
Manufacturers
MAIN PLANT:
SAN FERNANDO, CALIF.
OFFICES IN ALL PRINCIPAL CITIES
BREIDERT AIR-X-HAUSTERS
VENTILATORS
NERAL OFFICE: 13690 VAUGHN STREET • MAIL: P. O. BOX 1190 • SAN FERNANDO, CALIFORNIA 91341
PHONE: AREA CODE: 213 - 877-7127

Oct 31, 1973

Interstate Commerce Commission
Washington, D. C.
Attn: Robert L Oswald, Secretary

Subject: I. C. C. Order No. 35921

To Concerned:

I support ratification of subject matter regarding TNT's $1.00 per CWT dock-rate reduction. It represents a potential savings to our company and keeps us in a competitive market situation.

Respectfully,

Frank Vozza

FRANK VOZZA
Traffic Mgr.

260a

Swimrite, Inc.

15330 Oxnard St., Van Nuys, California 91408
Telephone: (213) 782-7772

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

Oct, 31, 1973

Interstate Commerce Commission
Washington, D. C.
Attn: Robert L Oswald, Secretary

Subject: I. C. C. Order No. 35921

To Concerned:

I Support ratification of subject matter in that it represents a potential savings to our company and keeps us in a competitive market situation.

Respectfully,

Marvin Schutts

MARVIN SCHUTTS
Traffic Mgr.

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

DIVISION OF AMERICAN CARRY-PRODUCTS CO., INC.
7425 Fulton Ave., North Hollywood, California 91605 • 877-5347

Oct 31, 1973

Interstate Commerce Commission
Washington, D. C.
Attn: Robert L Oswald, Secretary

Subject: I C C Order No. 35921

To Concerned:

I support ratification of subject matter in that it represents a potential savings to our company and accordingly, keeps us in a competitive market situation.

Respectfully,

Ivan Cavanaugh

Ivan Cavanaugh
Traffic Mgr.

262a

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

MAILING ADDRESS
POST OFICE BOX 276
PACOIMA, CALIFORNIA
ZIP CODE 91331

Exit-Aire® COMPANY
EFFICIENCY IN VENTILATION

FACTORY
13650 VAUGHN STREET
PACOIMA, CALIFORNIA
PHONE (213) 899-0265

Oct 31, 1973

Interstate Commerce Commission
Washington, D. C.
Attn: Robert L Oswald, Secretary

Subject: I. C. C. Order No. 35921

To Concerned:

I support ratification of subject matter regarding TNT's $1.00 per CWT dock rate reduction in that it represents a potential savings to our company and accordingly, keeps us in a competitive market situation.

Respectfully,

Frank Vozza

FRANK VOZZA
Traffic Mgr.

263a

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

601 OLIVE STREET SAINT LOUIS, MISSOURI 63101 (314) 421-5900

November 8, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C.

Dear Mr. Oswald:

With reference to Commerce Order 35921, we request that the rates now in effect remain as present.

This would greatly benefit Famous-Barr and our customer.

Very truly yours,

FAMOUS-BARR COMPANY

A.R. Bracke

A.R. Bracke
Asst. Traffic Mgr.

arb/ffs

264a

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

EXECUTIVE OFFICES

FASHION THIMBLE
FT SHOE COMPANY INC.
7777 BONHOMME AVENUE, SUITE 1320
CLAYTON, MISSOURI 63105 (314) 863-8870

November 8, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C.

Dear Mr. Oswald:

Regarding Interstate Commerce Order No. 35921, the Fashion Thimble Shoe Company is deriving benefits from the rates now in effect.

We strongly feel that the rates should be left as is.

Yours very truly,

FASHION THIMBLE SHOE COMPANY, INC.

R. J. O'Donnell

RJO:shh

The SEEBURG CORPORATION 1500 Dayton St., Chicago, Ill. 60622

2567 Greenleaf Avenue
Elk Grove Village, Illinois
60007

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

November 9, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C.

Subject: Order No. 35921 dated 10/24/73

Dear Sir:

In order for us to remain competitive with our products in the Western Coastal area, it is necessary for us to take advantage of Trans National Transport's delivered-in rates.

Every effort is being made by our company to hold the price line. One way to achieve this goal is to take advantage of this lower rate.

We sincerely hope this rate will remain in effect.

Very truly yours,

THE SEEBURG PRODUCTS DIVISION
DISTRIBUTION CENTER

L. L. Magnuson

L. L. Magnuson
General Traffic Manager

LLM/fl

AREA CODE 312 — JUNIPER 8-7100

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

PLAYSKOOL, INC.
A MILTON BRADLEY COMPANY
3720 NORTH KEDZIE AVENUE - CHICAGO, ILLINOIS 60618

November 8, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C.

SUBJECT: Order No. 35921 dated 10/24/73

Dear Sir:

In order for us to remain competitive with our products in the Western Coastal area, it is necessary for us to take advantage of Trans National Transport's delivered in rates.

Every effort is being made by our company to hold the price line. One way to achieve this goal is to take advantage of this lower rate.

We sincerely hope this rate will remain in effect.

Yours very truly,

Ben Jendrysik

Ben Jendrysik
Traffic Manager

267a

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

American Packaging Corp.

2048 W. North Ave. • Chicago, Illinois 60647 • 312/278-1070

November 7, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C.

Subject: Order No. 35921 dated 10/24/73

Dear Sir:

In order for us to remain competitive with our products in the Western Coastal area, it is necessary for us to take advantage of Trans National Transport's delivered-in rates.

Every effort is being made by our company to hold the price line. One way to achieve this goal is to take advantage of this lower rate.

We sincerely hope this rate will remain in effect.

Very truly yours,

Ann Culotta

AC:vc

Ann Culotta

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

JDS PRINTER CRAFTSMEN, INC.
833 NORTH ORLEANS STREET • CHICAGO, ILLINOIS 60610 • 312/337-4000

11-7-73

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C.

Subject: Order No. 35921 dated 10-24-73

Dear Sir:

In order for us to remain competitive with our products in the Western Coastal area, it is necessary for us to take advantage of Trans National Transport's delivered-in rates.

Every effort is being made by our company to hold the price line. One way to achieve this goal is to take advantage of this lower rate.

We sincerely hope this rate will remain in effect.

Sincerely,

Gerald Lakosky
JDS Printer Craftsmen, Inc.

Gerald D. Lakosky

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

BUNKER RAMO AMPHENOL

AMPHENOL INDUSTRIAL DIVISION
1830 South 54th Avenue • Chicago, Ill. 60650 • (312) 242-1000 • TWX: 910-229-1541

November 7, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C.

Subject: Order No. 35921 dated 10/24/73

Gentlemen:

Trans National Transport's rate reduction of $1.00 per cwt. for delivering-in freight to their dock has been a big help in holding our costs down and also enables us to remain competitive with our products.

In these days of rising prices and rising labor costs, we must take advantage of any and all means to save money by reducing our costs. TNT's delivered-in rate is one way of achieving this goal.

We respectfully request that the ICC rule in favor of allowing the $1.00 per cwt. delivered-in rate to remain in their tariff.

Very truly yours,

AMPHENOL INDUSTRIAL DIVISION

Thomas C. Rocco

Thomas C. Rocco
Traffic Department

RCR:i

270a

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

SLOAN VALVE COMPANY

10500 SEYMOUR AVENUE • FRANKLIN PARK, ILLINOIS 60131

Founded 1906 — Telephone (312) 671-4300 — Cable: Sloanvalco

November 5, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C.

Subject: Order No. 35921 Dated 10/24/73

Dear Sir:

In order for us to remain competitive with our products in the Western Coastal area, it is necessary for us to take advantage of Trans National Transport's delivered-in rates.

Every effort is being made by our company to hold the price line. One way to achieve this goal is to take advantage of this lower rate.

We sincerely hope this rate will remain in effect.

Sincerely

Thomas A. Korbecki

Thomas A. Korbecki
Traffic Manager

271a

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

ROBINSON'S

SERVICE CENTER • 13541 EAST GALE AVENUE • CITY OF INDUSTRY, CALIF. 91745

NOVEMBER 9,1973

MR. ROBERT L. OSWALD, SECRETARY

INTERSTATE COMMERCE COMMISSION

WASHINGTON, DC

Re: Docket #35921

Dear Mr. Oswald,

Trans National Transport Dock Rate reduction per Item 619 and 80040 of T.N.T. Tariff No. 14, ICC-FF No.15, will mean a substantial savings in our cost of transportation, which keeps rising at an alarming rate annually.

Therefore, we support this endeavor by Trans National Transport.

Very Truly Yours,

ROBINSON'S DEPARTMENT STORES

R. E. Booth
Traffic Manager

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

FAST SERVICE FOR BUSY PEOPLE
CC CARLSON MFG. CO.
ESTABLISHED 1946
METAL FINISHING EQUIPMENT AND SUPPLIES
1830 N. TYLER AVENUE • SOUTH EL MONTE, CALIF. 91733
GILBERT 3-9326 • CUMBERLAND 3-0444

November 5, 1973

Re: Docket No. 35921

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, DC

Dear Mr. Oswald,

We are in complete support of Trans National Transport Dock Rate reduction per item 619 and 80040 of Trans National Transport Tariff no. 14, ICC-FF no. 15.

With the rising cost of transportation this represents substantial savings to our company.

Very truly yours,

ROBERT CARLSON
Carlson Mfg. Co.

cc: Al Perry
Trans National Transport
2110 Alhambra Avenue
Los Angeles, California 90033

BOB MITCHELL DESIGNS p.o. box 831 / culver city / california 90230 / telephone 871-0860

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

November 1, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, DC

Dear Mr. Oswald, Subject: Docket No. 35921

We are in complete support of Trans National Transport Dock Rate reduction per item 619 and 80040 of Trans National Transport Tariff no. 14, ICC-FF no. 15.

With the rising cost of transportation this represent substantial savings to our company.

Very truly yours,

BOB MITCHELL DESIGNS

Sam Inouye

Sam Inouye, Traffic Manager

cc: Mr. Dan Wright
Trans National Transport
2110 Alhambra Ave.
Los Angeles, CA 90033

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

DEL-MET WESTERN, INC.

DIV. OF DEL-MET CORP.

WESTERN OFFICE
O. BOX 45615
S ANGELES, CALIF. 90045
ONE 213-776-3232

MAIN OFFICES
44 WEST STREET
WALTON, NEW YORK 13856
PHONE 607-865-4141

October 31, 1973

Interstate Commerce Commission
Washington, D.C.

Re: Docket No. 35921

Attn: Mr. Robert L. Oswald

Dear Mr. Oswald,

We are in complete support of Trans National Transport's dock rate reduction per Items 619 and 80040 in T.N.T. Tariff No. 14, I.C.C. - F.F. No. 15.

With the rising cost in transportation this would represent considerable savings to our company.

Very truly yours,

Jean Santoni,
Manager
DEL-MET WESTERN, INC.

JS:cal

MEMBER
SPCA

275a

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

RS RASCO STORES
2777 NORTH ONTARIO STREET, BURBANK, CA. 91504
P.O. BOX 54179 • TERMINAL ANNEX • L.A. CA. 90054
(213) 843-3773

• RASCO STORES
• RASCO-TEMPO
• EMBASSY FABRICS
• TOY HOUSE
• TOY WORLD

October 31, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, DC

Dear Mr. Oswald, RE: DOCKET 35921

We are in complete support of Trans National Transport Dock Rate reduction per item 619 and 80040 of Trans National Transport Tariff no. 14, ICC-FF no. 15.

With the rising cost of transportation this represents substantial savings to our company.

Very truly yours,

RASCO STORES

N. E. Oliver, Traffic Manager

NEO/hm

cc: Mr. Dan Wright
Trans National Transport
2110 Alhambra Ave.
Los Angeles, CA 90033

TM
DIVISION OF GAMBLES

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

West Coast National Press
2766 South La Cienega Boulevard
Los Angeles, California 90034

November 1, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, DC

Dear Mr. Oswald, SUBJECT: DOCKET NO. 35921

We are in complete support of Trans National Transport Dock Rate reduction per item 619 and 80040 of Trans National Transport Tariff no. 14, ICC-FF no. 15.

With the rising cost of transportation this represent substantial savings to our company.

Very truly yours,

WEST COAST NATIONAL PRESS

Porter Derrington

Porter Derrington, Manager

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

REGAL APPAREL, LTD.
APPAREL, LTD.
REGAL APPAREL, LTD. 2694 14TH STREET
IMPORT DEPOT
OAKLAND, CALIFORNIA 94607
TELEPHONE (415) 465-3771

November 12, 1973

Re: Docket No. 35921

Interstate Commerce Commission
Washington, D.C.

Attention: Mr. Robert L. Oswald

Dear Mr. Oswald:

Be advised that the delivered-in-dock rate published by Trans National Transport in Tariff 14, Items 619 and 8004, is most beneficial.

The need for this type of dollar-saving rate is great. With the continuous rise in freight rates, it is becoming increasingly more difficult to serve a market area economically.

I highly recommend the retention of the rates in question.

Yours very truly,

REGAL APPAREL, LTD.

Stan Bigelow

Stan Bigelow

SB:mk

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

REGAL APPAREL, LTD. 124 EAST OLYMPIC BOULEVARD 6TH FLOOR LOS ANGELES, CALIF. 90015 TELEPHONE 213 749-7341

November 7, 1973

MR. ROBERT L. OSWALD
SECRETARY
INTERSTATE COMMERCE COMMISSION
WASHINGTON , D.C.

Dear Mr. Oswald: In re: Docket 35921

This letter will confirm our support the application of Trans National Transport relating to Dock Rate reduction covered by item 619 and 80040 in Trans National Transport Tariff No. 14, ICC-FF No. 15.

We require the flexibility that is offered in applications such as the above.

We are currently shipping to all 50 states and our customers range from the major chains, and the largest retail dept. stores to the smallest shops in every part of the country.

The above carrier has demonstrated its ability to render the kind of service Regal and its customers need.

Very truly yours,
REGAL APPAREL, LTD.

Joseph A. Schuch
Traffic Manager

I.C.C. Practitioner

ja/JAS

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

weil PUMP COMPANY OF CALIFORNIA

BALL BEARING CENTRIFUGAL PUMPS

MULTI STAGE PUMPS
OG SEWAGE EJECTORS
TIC CELLAR DRAINERS
UTY BILGE PUMPS
E LIFT STATIONS

WATER SUPPLY SYSTEMS
CONDENSATION RETURN
AND BOILER FEED PUMPS
CIRCULATING PUMPS
SUBMERSIBLE PUMPS

Post Office Box 4621 North Hollywood, California 91607

877-5161

(VALLEY) 980-3316

November 8, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, DC

Dear Mr. Oswald, DOCKET NO. 35921

We are in complete of Trans National Transport Dock reduction per item 619 and 80040 of Trans National Transport Tariff no. 14, ICC-FF no. 15-

With the rising cost of transportation this represents substantial savings to our company.

Very truly yours,

Ron Hall

RON HALL
WEIL PUMP COMPANY

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

The Kama Sutra Company, 1041 North McCadden Place, Los Angeles, California 90038, Phone (213) 461-2947

November 8, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, DC

Dear Mr. Oswald,

SUBJECT: DOCKET 35921

We are in complete support of Trans National Transport Dock Rate reduction per item 619 and 80040 of Trans National Transport Tariff no. 14, ICC-FF no. 15.

With the rising cost of transportation this represents substantial savings to our company.

Very truly yours,

David T. Wadsworth, General Manager
Kama Sutra

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

DEAN LEWIS ASSOCIATES

5575 SHEILA STREET
LOS ANGELES, CALIFORNIA 90040
(213) 726-8811

November 7, 1973

RE: DOCKET NO. 35921

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, DC

Dear Mr. Oswald,

We are in complete support of Trans National Transport Dock Rate reduction per item 619 and 80040 of Trans National Transport Tariff no. 14, ICC-FF no. 15.

With the rising cost of transportation this represents substantial savings to our company.

Very truly yours,

Dennis E. Gillespie

Dean Lewis Associates

cc: Al Perry
Trans National Transport
2110 Alhambra Avenue
Los Angeles, California

EXHIBIT NO. 2
DOCKET NO. 35921
(Sub No. 1)

ALCOA SPORT PRODUCTS COMPANY
SUBSIDIARY OF ALCOA
15601 RESIN PLACE
SANTA FE SPRINGS, CALIFORNIA 90670

ALCOA

November 8, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C.

Re: Docket No. 35921

Dear Mr. Oswald,

We are in complete support of Trans National Transport Dock Rate reduction per item 619 and 80040 of Trans National Transport Tariff no. 14, ICC-FF no. 15.

With the rising cost of transportation this represents substantial savings to our company.

Very truly yours,

ALCOA SPORT PRODUCTS COMPANY

Al Slocum

Al Slocum
Warehouse Manager

AS/lc

283a

EXHIBIT NO. 2
DOCKET NO. 35921 (Sub No. 1)

GENERAL OFFICES
5051 RODEO ROAD
AT LA BREA AVE
LOS ANGELES 16
PHONE 293-5111

THRIFTY DRUG STORES CO. INC.

ADDRESS REPLY TO
P. O. BOX 92333
WORLDWAY POSTAL CENTER
LOS ANGELES, CALIF. 90009

November 9, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, DC

Dear Mr. Oswald, Subject: Docket No. 35921

We are in complete support of Trans National Transport Dock Rate reduction per item 619 and 80040 of Trans National Transport Tariff no. 14 ICC-FF no. 15.

With the rising cost in transportation this represents substantial savings to our company.

Very truly yours,

C.G. Gonzales, Traffic Supervisor
Thrifty Drug Stores Co. Inc.

284a

EXHIBIT NO. 2
DOCKET NO. 3592
(Sub No. 1)

STUART PHARMACEUTICALS
Division of ATLAS CHEMICAL INDUSTRIES, INC.
3360 East Foothill Boulevard | Pasadena, California 91109

November 8, 1973

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, DC

Re: Docket #35921

Dear Mr. Oswald,

We are in complete support of Trans National Transport Dock Rate reduction per item 619 and 80040 of Trans National Transport Tariff no. 14, ICC-FF no. 15.

With the rising cost of transportation this represents substantial savings to our company.

Very truly yours,

Don Connor

Don Connor
Supervisor
Warehouse and Shipping

STATEMENT OF FACTS AND ARGUMENT BY ROCKY MOUNTAIN MOTOR TARIFF BUREAU, INC.

BEFORE THE

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 35921 (SUB NO. 1)

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

PROTESTANTS' STATEMENT

OF

FACTS AND ARGUMENT

MODIFIED PROCEDURE

Dated at:

4045 Pecos Street
P. O. Box 5746, T.A.
Denver, Colorado 80217
February 1, 1974

Due Date: February 6, 1974

For Protestant:

Don R. Devine

Registered Practitioner

BEFORE THE

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 35921 (SUB NO. 1)

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

PROTESTANTS' STATEMENT

OF

FACTS AND ARGUMENT

Comes now the Rocky Mountain Motor Tariff Bureau, Inc. (RMB), protestant in the above proceeding, and submits its Statement of Facts and Argument, and respectfully says:

STATEMENT OF THE CASE

Under the date of November 27, 1973, RMB protested and requested suspension of Item 520-C in Supplement 41 to Freight Forwarders Tariff Bureau, Inc., Agent, Tariff 16-K, I.C.C.-F.F. 206. The assailed matter involved an allowance of one dollar ($1.00) per hundred pounds on LTL shipments that were transported to the forwarder at its facility without expense to the forwarder.

After due consideration of protestant's petition for suspension and the reply for and on behalf of the involved forwarders, the Suspension and Fourth Section Board, by its order dated October 24, 1973, concluded

to place the proposal under suspension to and including July 14, 1974, in I. & S. Docket No. 8894 (Sub No. 1), *Allowance for Delivery of Shipments to Forwarder Facilities*, and the Commission, on its own motion, by order dated December 12, 1973, instituted an investigation into the existing provisions in paragraph (f), Item 52000, TNT Tariff Agents, Inc., Agent, Tariff No. 14, I.C.C.-F.F. No. 15, under Docket No. 35921 (Sub No. 1), *Allowance for Delivery of Shipments to Forwarder Facilities.*

By order served December 17, 1973, the matter, Docket No. 35921 (Sub No. 1), *supra*, was assigned for handling under modified procedure with respondent's opening statement due January 7, 1974, and protestant's statement due thirty days thereafter.

Protestant acknowledges the receipt of respondent's timely filed opening statement, and submits herewith its Statement of Facts and Argument.

VERIFIED STATEMENT OF KEITH ANDERSON

My name is Keith Anderson. I am a graduate of the Business Administration Department of Portland State University and hold a Bachelor of Science degree with a major in accounting and finance. I have a total of twenty years' experience in all facets of motor carrier accounting, including general accounting, financial accounting, cost accounting, budgeting and statistics. For the past fifteen years I have participated in various carrier cost and business finance seminars conducted by the Interstate Commerce Commission, National Accounting and Finance Council, and the state trucking associations of Washington, California and Oregon. During that period of time, I developed and prepared cost evidence in numerous proceedings before the Interstate Commerce Commission and the Public Utility Commissions of the States of Arizona, California, Colorado, Idaho, Montana, New York, Oregon, Utah, Washington, Wisconsin and Wyoming.

For twelve years, from 1953 to 1965, I was employed by Consolidated Freightways Corporation of Delaware. During this period of time I held various positions in accounting, budgeting and statistics. These positions included four years as Division Accountant with the general commodities, heavy hauling, local cartage and overseas container operating divisions, and five years as Manager of the cost, budget and statistical department.

For six years, from 1965 to 1970, I was employed as a Cost Analyst by Pacific Inland Tariff Bureau, Inc. Since September, 1970, I have been employed in the Cost and Statistical Department of the Rocky Mountain Motor Tariff Bureau, Inc.

I am familiar with the issues involved in this proceeding and have knowledge of the facts shown herein.

In considering the data submitted by the respondent in this proceeding, I find that the respondent failed to furnish any cost evidence whatsoever to support the proposed allowance for delivery of shipments to forwarder facilities. In fact, the respondent has completely failed to justify his position by not showing the essential cost-revenue relationship in this proposal!

Since the respondent relied strictly upon revenue figures and failed to come forward with the essential cost data to support the proposed allowance, it was necessary that I use the latest available cost information released by the Interstate Commerce Commission regarding the Transcontinental Territory, as shown in Statement 2C1-71. From page 183 of this publication, I find that the average cost for pickup and delivery service for a typical 5,000 lb. shipment moving between New York and Los Angeles, California, is 66.6 cents per cwt.

However, in this proceeding we are only concerned with the cost of delivery to the forwarder facility, which amounts to one-half of the total pickup and delivery service or 33.3 cents per cwt.

Prior Commission decisions have held that the validity of an allowance depends upon the cost to the involved shipper or shippers in transporting a shipment to a forwarder's terminal. Although the respondents' contend that motor carrier costs are not relevant in this proceeding, it is appropriate to utilize the motor carrier pickup costs as shown above from the Commission's Statement 2C1-71, due to the absence of any cost showing by the respondent. Furthermore, pickup and delivery service is essentially similar whether performed by motor carriers or freight forwarders.

The proposed allowance of $1.00 per cwt. for delivery of a 5,000 lb. shipment to the forwarder's facility would provide the shipper or consignee a rebate or a windfall discount on a variable cost level basis of $.667 per cwt. ($1.00 - .333 equals $.667). In addition, it should be noted that the greater the size of the shipment tendered under this proposal, the greater is the allowance or discount received by the shipper or consignee!

Furthermore, Mr. Zentner contends on page 3 of Respondents Opening Statement of Facts and Argument in the lead docket:

> The need for this type of rate structure was to meet the competition of unregulated pool car distributors and was in no way designed to attract or accomplish diversion from competing regulated modes of transportation. (Emphasis supplied)

On page 2 of Exhibit No. 3 in the lead docket, Mr. George W. Fogel of the Hand Tool Division of Dresser Industries, Inc. states in the last two sentences:

> We did not want to divert from common carriers but in order to remain competitive we have been forced into these drastic measures. At this point, we have diverted 350,000 lbs. per month. (Emphasis supplied)

Who are we to believe regarding the diversion of traffic from competing regulated modes of transportation? Mr. Fogel has stated that diversion from the motor carriers has already begun to the tune of 350,000 lbs. per month for only one of the respondent's supporting shippers.

In conclusion, I would state that the evidence submitted by the respondents in support of the proposed allowance for delivery of shipments to forwarder facilities, or the so-called "dock rates", of $1.00 per cwt. is not justified. In my opinion, the respondents failed to produce any cost evidence or make any representations regarding expense-revenue relationships pertinent to a matter of this nature. Also, the respondents failed to show that there would not be a diversion of traffic under the proposed allowance. Finally, the utilization of Transcontinental Territory cost data from Statement 2C1-71 of the Interstate Commerce Commission reveals that proposed allowance would provide the shipper or consignee an unwarranted windfall discount or rebate on their freight rates!

Keith Anderson

STATE OF COLORADO)
) ss
COUNTY OF DENVER)

Keith Anderson, being duly sworn, deposes and says that he has read the foregoing statement and knows the contents thereof and that the same are true as stated.

Keith Anderson

Subscribed in my presence and sworn to before me by the affiant above-named this 1st day of February, 1974.

Daniel E. McNamee, Notary Public
in and for the State of Colorado.
My Commission expires February 25, 1974

ARGUMENT

This protestant firmly believes that the instant proceeding was initiated by the Commission because of a failure by the respondent to abide by Commission tariff publication regulations in publishing the $1.00 allowance now in effect. While the failure to properly symbolize the TNT tariff provision is characterized by Witness Zentner as "merely an oversight" (page 2 of his Opening Statement), it is important to note that this same "oversight" apparently occurred in identical tariff provisions published to be effective in July of 1972 for ABC Freight Forwarders Corporation (I.C.C.-F.F. No. 35) and Midland Forwarding Corporation (I.C.C.-F.F. 15). Those tariff provisions were issued by the same Witness Zentner. Therefore, we would initially note that the Commission has authority to strike from its files any tariff matter which is not filed in conformity with the Interstate Commerce Act and the applicable regulations thereunder. See *Acme Fast Freight v. United States*, 30 F. Supp. 968 (S. D. N. Y., 194[illegible]. affirmed *per curiam*, *Acme Fast Freight v. United States*, 309 U.S. 638, and *Heavy and Specialized Carriers' Tariff Bureau v. U. S. A. C. Transport, Inc.*, 302 I.C.C. 487 (1957).

Respondent's initial argument in this proceeding is an attempt to cloud the real issues herein by a semantical differentiation between allowances and so-called "dock rates". We respectfully submit that such a distinction is without merit and that the existing provisions are, in fact, allowances which are subject to the provisions of Section 415 of the Interstate Commerce Act. In *Freight Forwarder Allowances at Baltimore,*

Md., 315 I.C.C. 719, various forwarders proposed to establish reductions in their class rates, applicable when the shippers performed the pickup, on shipments from Baltimore to Chicago, Illinois, and Milwaukee, Wisconsin. At page 721, the Rates and Practices Review Board stated the following:

> Section 415 of the act prohibits allowances to be paid by freight forwarders which are "more than just and reasonable." This requires some indication that the proposed allowance is not in excess of the average shipper's cost of performing these services. As stated, ABC claims that its cost of performing the pickup service ranges from 55 to 60 cents per 100 pounds, but this statement is not supported by any cost data; and no evidence was presented of the costs of shippers or cartage companies performing the service for shippers. Before we can approve an allowance to shippers for carrier service, we must know what the shippers' costs are for that service when performed by or for the shippers. In the absence of such a showing the evidence before us is inadequate to support a finding that the proposed allowance is no more than is just and reasonable. (Emphasis supplied)

To reiterate, the cited case involved a reduction in rates if a shipment was delivered to the forwarder's receiving station. As in the instant proceeding, no direct payment was to be made to a shipper performing such service. Rather, a reduced rate would apply. We respectfully submit that whether a shipper or consignee benefits from the reduced "dock rate", the difference between such "dock rate" and the

rate which would otherwise apply is an allowance which must be just and reasonable under Section 415. 1/

In the lead docket, respondent argues at page 5 of its Opening Statement that "this method of publishing rates is not new," citing similar tariff provisions published previously by ABC Freight Forwarding Corporation and Midland Forwarding Corporation. It was these very provisions which were not properly symbolized as reduced rates and later transferred and brought forward as reissued matter in Item 52000 of TNT Tariff No. 14, I.C.C. F.F.-15. That publication also failed to properly symbolize the reduction. Thus, we fail to see the relevance of such prior published rates, which escaped Commission scrutiny only because their publication violated the Commission's rules and regulation with regard to tariff publication.

Witness Anderson has discussed in detail the actual effect that the TNT provisions have on existing forwarder and motor carrier rates. Suffice it to say that the forwarders have failed by a wide margin to establish that the allowance does not exceed the cost to shippers who

1/ See also *Central Territory Motor Carrier Rates*, 31 M.C.C. 273, which involved publication of reduced rates for shippers who elected to tender shipments at a carrier's terminal. Division 5, at page 279, while approving the concept of reduced rates for such service, stated that the method of allowance was not material "as long as the changes are not lower than those resulting from the prescribed rates and authorized allowances." (Emphasis supplied) In the instant proceeding, the $1.00 reduction exceeds existing allowances by 80 to 95 cents per cwt! See in the lead docket Exhibit No. ROS-1 of Opening Statement of the Eastern Central Motor Carriers Association, Inc.

would provide the pickup service. Furthermore, there is absolutely no evidentiary showing whatsoever that the resulting "dock rates" would be compensatory.

The respondent submitted a number of letters from various shippers who support the involved "dock rate". We would sincerely hope that the Commission's attention is not diverted by such "letters of support" when the real issue in this proceeding is whether the involved $1.00 allowance is just and reasonable under Section 415 of the Act. It is not surprising to see shippers support a rate which exceeds existing forwarder allowances by 80 to 95 cents per cwt. What is significant in this proceeding, however, is that not one single shipper states what it costs to provide the pickup service for the forwarder - so that the "dock rate" will apply. We submit that such letters, many of which contain identical wording, are entitled to little weight in considering the real issues in this proceeding.

Section 415 explicitly states:

> If the owner of property transported in service subject to this part directly or indirectly renders any service connected therewith, or furnishes any instrumentality used therein, the charge and the allowance therefor, to such owner, shall be published in tariffs filed in the manner provided in this part and shall be no more than is just and reasonable...

The test to be used to determine the reasonableness of an allowance is stated in *Combined Bill of Lading - Freight Bill Allowance*, 323 I.C.C. 168, at 172:

> In considering the reasonableness of proposed allowances, the Commission has adhered to the principle that the amount paid (1) should not be more than is just and reasonable for

> the service or instrumentality furnished, and (2) should not exceed the reasonable cost to the owner of the goods of performing the service or furnishing the instrumentality used; whichever of these sums is the lower marks the maximum the carrier may pay. See *Allowance for Privately Owned Tank Cars*, 258 I.C.C. 271, 378, cited with approval in the Supreme Court's affirmation on the merits in *El Dorado Oil Works v. United States*, 328 U.S. 12, 18 n. 2 (1946).

In this proceeding, respondent has not submitted one iota of evidence to show the cost of the service or instrumentality furnished, and more importantly, the cost to the owner of goods of performing the service. Thus, there is no basis on which to permit the $1.00 allowance to continue in effect.

In *Freight Forwarder Allowances at Baltimore, Md., supra*, it was stated at page 721:

> Whether the proposals are regarded as reduced rates or as increased allowances to shippers, they have not been justified. In order to establish the reasonableness of proposed reduced rates it is incumbent upon the respondents to show that they would be compensatory for the service to be performed thereunder. The record is devoid of any evidence bearing on the compensatory character of the reduced rates.

It is respectfully submitted that the record in this proceeding is equally devoid of any evidence bearing on the compensatory character of the reduced rates, and that no showing has been made that the $1.00 allowance is just and reasonable.

We would respectfully invite the Commission's attention to recent proceedings which involved the freight forwarders and issues similar to those involved herein. In I. & S. Docket No. 8894, *Allowance for Delivery of Shipments to Forwarder Facilities*, the Commission suspended a $1.00 allowance in lieu of pickup applicable for three freight

forwarders participating in Freight Forwarders Tariff Bureau, Inc., Agent, Tariff I.C.C.-F.F. 206. In I. & S. Docket No. 8880, the Commission suspended the effectiveness of an allowance in lieu of pickup of 40 cents per 100 pounds at Harrisburg, Pennsylvania. In Case No. 59857, the forwarders published allowances in lieu of pickup ranging from 30 to 70 cents per 100 pounds which would have applied at major cities throughout the United States. In each of the cited proceedings the forwarders chose to cancel rather than defend the proposed allowances. Ironically, in I. & S. No. 8894, Freight Forwarders Tariff Bureau, Inc., Agent, published a $1.00 per cwt. allowance which it contended was "issued to meet Freight Forwarders competition (TNT 15 52000)", the very matter at issue in this proceeding. Thus, to allow TNT to continue offering the $1.00 allowance clearly places competing forwarders at a disadvantage and it is clear that approval of the TNT provisions will result in identical publications by competing forwarders, citing this proceeding as authority. Thus, the forwarders will have achieved indirectly through the guise of "dock rates" what they have consistently been unable to achieve directly in seeking allowances in lieu of pickup service. It would seem incongruous to allow such a result.

It is respectfully submitted that the TNT allowance provision is unjust and unreasonable under Section 415 of the Interstate Commerce Act, or otherwise unlawful.

Wherefore, this protestant respectfully requests the Commission to find:

(1) That the TNT provision was originally published in violation of Commission tariff regulations;

(2) That said provision, if allowed to remain in effect, would be disruptive of the motor carriers' rate structure and the rate structures of other freight forwarders;

(3) That the involved tariff provision is unjust and unreasonable, and violates the provisions of Section 415 of the Interstate Commerce Act; and,

(4) That the involved tariff provision should be ordered cancelled and this proceeding discontinued.

Respectfully submitted,

_____

Don R. Devine

Registered Practitioner

Dated:

4045 Pecos Street
P. O. Box 5746, T.A.
Denver, Colorado 80217

February 1, 1974

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on Mr. F. H. Zentner, Vice President, TNT Tariff Agents, Inc., Agent, 201 Eleventh Avenue, New York, New York, 10001, by sending him a copy thereof by air mail, postage prepaid, and properly addressed.

Dated at Denver, Colorado, this 1st day of February, 1974.

Don R. Devine

REPLY STATEMENT BY TNT TARIFF AGENTS, INC.

Before The

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 35921 (Sub No. 1)

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

RESPONDENT'S REPLY STATEMENT

MODIFIED PROCEDURE

Dated: February 22, 1974

Due: February 26, 1974

F. H. Zentner
Vice President
TNT Tariff Agents, Inc., Agent
201 Eleventh Avenue
New York, New York 10001

The matter at issue herein will not affect the quality of the human environment.

Comes now TNT Tariff Agents, Inc., hereinafter also referred to as TNT, 302a respondent in the above-styled proceeding, and acknowledges receipt of protestant's timely filed statement of facts and argument and herewith submits its reply statement:

Protestant through its witness Keith Anderson relies on Statement 2C1-71 for average pick up and delivery costs in Trans Continental Territory. Mr. Anderson, therefore, comes up with an average pick up cost for what he calls a typical 5,000 lb. shipment moving between New York and Los Angeles of 33.3 cents per cwt. If this were the 1940's or even the early 1950's this average pick up cost might be valid. We are, however, talking about now, 1974, probably the worst period of inflation in this country's history. In our opening statement of facts and argument we referred to the Freight Forwarders initial statement filed in connection with Ex Parte No. 296, PROCEDURES FOR PARTIAL RECOUPMENT OF INCREASED CARRIER LABOR COSTS. Exhibits 7 and 8 therein detail specific freight forwarder pick up costs, based on both Section 409 contracts and local cartage contracts. It takes only a cursory glance to see that the 33.3 cents per cwt. figure is less than realistic. Freight forwarders generally use the same local and Section 409 agents and the compensation paid to these carriers is generally the same level for all forwarders. As a matter of fact, many long haul motor carriers often use these same agents, more often than not paying them a higher rate of compensation than freight forwarders. Mr. Anderson seeks to justify his use of motor carrier costs by stating at page 5 that pick up and delivery service is essentially similar whether performed by motor carriers or freight forwarders. This may be true as far as the bare essentials are concerned but, the cost picture is quite different. Freight forwarders are limited to servicing only commercial zones in their own terminal areas with their own equipment but, costwise are at the mercy of concurring carriers when it comes to servicing

points outside such commercial zones. Motor carriers do not have such cost problems since their sphere of operations is not limited to commercial zones. Total LCL tonnage handled by the three participating forwarders for the first eleven months of 1973 was 301,100,846 lbs. Expenditures for cartage and interline for this same period totalled $9,473,067. This averages out to a cost per cwt. of $3.15. One-half of this amount, or $1.57, would represent the average cost of pick up. The $1.00 per cwt. figure used to establish the dock rates here at issue is less than the average cost to respondents of performing pick up service. It must, therefore, follow that if it costs respondents in excess of $1.00 per cwt. to perform pick up service, with the volume of traffic they handle, it must cost shippers who have nowhere near the volume of respondents' traffic much more on average. Since the assailed schedules are available to all shippers, without discrimination, it would be an impossible task to portray each and every shipper's cost as suggested by protestant.

Respondent wishes to reiterate that the $1.00 per cwt. reduction here at issue is not an allowance. It is a pure and simple dock rate. It would defy logic, therefore, to compare the $1.00 reduction to existing 5¢, 10¢ or 15¢ per cwt. allowances presently published by many carriers. To prove this point that dock rates have no realistic relationship to allowances in lieu of pick up, the Commission's attention is directed to respondent's Exhibit No. 1 submitted with its opening statement of facts and argument in this proceeding. Exhibit No. 1 is actually the opening statement of facts and argument submitted by respondent in the lead proceeding. In Exhibit No. 1 attached to that pleading, respondent has shown a comparison of various dock rates applicable on specific commodities in various territories against the picked up rates applicable on those commodities. At page 2 thereof it can be noted that on Cleaning Compounds, liquid from New York, N.Y. to Los Angeles, Calif., the dock rates are $2.00, $1.39 and $1.61 per cwt. lower than the picked up rates on 500, 1,000 and 5,000 lb. shipments respectively. On Chinaware, Earthenware and Glassware the dock rates are $2.58,

$2.26 and $2.11 lower than the picked up rates from New York to Los Angeles on 500, 1,000 and 5,000 lb. shipments respectively. Similar wide differentials exist between the other dock rates and picked up rates shown in that exhibit. Protestants have never seen fit to protest or file a complaint against these publications. It stands to reason that if it is just and reasonable for shippers and receivers of Cleaning Compounds, Chinaware, Earthenware, and Glassware to receive the substantial dock rate reductions enumerated above, it is certainly as just and reasonable for shippers and receivers of other commodities to receive a $1.00 per cwt. reduction in their freight charges on dock delivered freight. If the Commission were to hold otherwise it would certainly open the door to charges of discrimination.

Protestant at pages 8 and 10 of its argument contends that the original ABC Freight Forwarding Corporation and Midland Forwarding Corporation publications were not properly symbolized. The Commission's attention is directed to the second paragraph of Item 619-A in Supplement No. 29 to ABC's Tariff I.C.C.-F.F. No. 77 which refers to Column D of Supplement No. 30 for dock rates. Supplement No. 30, on its title page, carries the statement "This supplement contains changes resulting in reductions." Both supplements were effective July 31, 1972. There is no attempt at subterfuge here. What could be clearer than this title page statement. The exact same situation prevails with respect to Item 619-A in Supplement No. 122 to Midland's I.C.C.-F.F. No. 35 which refers to Supplement No. 123 carrying the identical statement on its title page. The fact remains that when these provisions were transferred to TNT Tariff Agents, Inc. Tariff I.C.C.-F.F. No. 15 it was an honest oversight that they were not symbolized as new matter for the account of National Carloading Corporation. The tariff compiler knew that they were already effective for ABC and Midland and assumed, incorrectly, that they were also effective for National.

Mr. Anderson makes reference to respondent's statement that this type of rate structure was to meet competition from unregulated pool car distributors and was not designed to attract or accomplish diversion from competing regulated modes

of transportation. He then points to the letter of Mr. George W. Fogel of 305a
the Hand Tool Division of Dresser Industries wherein Mr. Fogel states that he has diverted traffic from common carriers to avail himself of respondent's lower dock rate structure. The key word in respondent's statement is "designed". This rate structure was not designed to divert traffic from competing regulated carriers but, by the very nature of the Interstate Commerce Act, a rate, rule or charge published in a tariff lawfully filed with the Commission must be applied without discrimination. Respondent contends, even though the rate structure here at issue is open to everyone, that the bulk of tonnage to be diverted will be from unregulated pool car distributors. A clear indication that the assailed schedules have not detrimentally affected protestant's members' traffic is the fact that their revenues and profits have increased substantially during the period of time that these dock rates have been in effect. Also, there have been no protests or complaints filed by competing freight forwarders with respect to these dock rates which would appear to speak for itself.

WHEREFORE, in light of the foregoing, respondent respectfully requests the Commission to find:

a) That the TNT provision was not published in violation of Commission tariff regulations;

b) That these provisions, if allowed to remain in effect, would not be disruptive of the motor carriers' rate structure and the rate structures of other freight forwarders;

c) That the involved tariff matter is just and reasonable and not violative of Section 415 of the Interstate Commerce Act; and

d) That the involved tariff matter should be allowed to remain in effect and this proceeding discontinued. 306a

Respectfully submitted,

TNT TARIFF AGENTS, INC.

F. H. Zentner
Vice President
201 Eleventh Avenue
New York, New York 10001

Dated: February 22, 1974

Due: February 26, 1974

FHZ/cj

VERIFICATION

State of New York)
New York County) SS:

F. H. Zentner, being duly sworn, deposes and says that he has prepared the foregoing statement and knows the contents thereof and that the same are true as stated.

F. H. Zentner

Subscribed in my presence and sworn to before me the twenty second day of February, 1974.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing first class, postage prepaid, a copy thereof properly addressed to each such party.

Dated at New York, N.Y., this
twenty second day of February, 1974.

F. H. Zentner

INITIAL DECISION OF INTERSTATE COMMERCE COMMISSION
DATED MAY 29, 1974 AND CERTIFICATE OF SERVICE

308a

RECEIVED
JUN 24 1974

Fred Gaston
I think you ought to take
[illegible]

No. 35921 (Sub-No. 1)

SERVICE DATE
JUN 20 1974

Interstate Commerce Commission

Certificate of Service

The SECRETARY of the Interstate Commerce Commission hereby certifies that the attached initial decision of the Administrative Law Judge has been filed with and duly made part of the record herein and has this date been served upon all known parties in the manner provided by law and the regulations of this Commission.

Exceptions to said decision, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION, Washington, D.C. 20423, and served on all other parties of record within 30 calendar days (20 days if there are no other parties) from the date of service shown above. Replies thereto may be filed within 20 calendar days after the final date for filing exceptions. If either date falls upon a Saturday, Sunday, or legal holiday, then the applicable pleading must be filed by the end of the next business day.

If no exceptions are filed to the initial decision, and it is not stayed by the Commission, the initial decision becomes the order of the Commission by operation of law upon expiration of the period for filing of exceptions. The parties to this proceeding are warned that it should not be assumed that the initial decision has become effective as the order of the Commission by operation of law until a notice to that effect has been received.

In addition, any new operation to be authorized by the initial decision, if it becomes the order of the Commission by operation of law, may not be commenced until a certificate, permit, or license, as the case may be, has actually been issued by the Commission. A certificate, permit, or license will not be issued until the applicant has complied with the provisions of the Interstate Commerce Act and the requirements of the Commission thereunder as specifically set forth in the initial decision.

Robert L. Oswald

ROBERT L. OSWALD
Secretary

(SEAL)

OH

INTERSTATE COMMERCE COMMISSION

INITIAL DECISION

No. 35921 (Sub-No. 1)

ALLOWANCE FOR DELIVERY OF SHIPMENTS
TO FORWARDER FACILITIES

Assailed allowance resulting in rate reduction, for delivery of shipments to freight forwarders facilities, in lieu of forwarder provided pickup, found not shown to be just and reasonable. Schedules ordered cancelled and proceeding discontinued.

F. H. Zentner for respondent.

Don R. Devine for protestant.

By Albert E. Luttrell, Administrative Law Judge:

The evidence submitted by the parties in this proceeding was filed and received under the modified procedure. Thereafter the matter was referred to the Judge for the recommendation of an appropriate order thereon accompanied by the reasons therefore.

By schedules filed to become effective on September 10, 1973, ABC Freight Forwarding Corporation, Midland Forwarding Corporation and National Carloading Corporation, all freight forwarders, proposes a reduction of $1.00 per 100 pounds from their rates on shipments delivered to their forwarder facilities, which otherwise would have been afforded a forwarder pickup.

Upon protest by the Rocky Mountain Motor Tariff Bureau, Inc., (RMB or protestant), an investigation was instituted by order dated December 12, 1973, into the lawfulness of the proposed rates. They became effective on September 10, 1973.

Item 52,000 of TMT Tariff Agents, Inc., Agent, Tariff No. 14, I.C.C.-F.F. No. 15 being investigated is as follows:[1]

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[1]This schedule is identical in nature to schedules considered in I.&S. Docket No. 8894, Allowances For Delivery of Shipments to Forwarder Facilities, and Docket No. 35921, Allowances For Delivery of Shipments To Forwarder Facilities. An Initial Decision in these cases was served on March 22, 1974.

Shipments Delivered To Forwarder

Rates, charges and provisions which do not include pickup service will apply only when shipments are delivered directly to Forwarder's facility. Shipments which are delivered to Forwarder's Agents will not be considered to be delivered to the Forwarder and will not be subject to rates, charges and other provisions which do not include pickup service. Except as otherwise provided, where tariffs making reference to this tariff do not provide LTL rates applicable when no pickup service is afforded, the rates in the applicable tariffs making reference to this tariff will be subject to the provisions of Column D of Note 1 or in the absence of specific provisions or Column D the rates will apply less one dollar per hundred pounds. Where provisions are made in tariffs making reference hereto for rates which do not include pickup service, such rates will not apply except at New York, N. Y. on shipments under 500 pounds they will apply, and in lieu thereof the rates which do include pickup service will apply and be subject to Column D of Note 1 herein or in the absence of specific provisions or Column D, the rates which include pickup service less one dollar per hundred points will apply.

The rules in the agency tariff have the effect of reducing by $1.00 per 100 pounds published full service rates, that is rates under which the freight forwarders are obligated to provide a pickup service, when shipments are delivered to the freight forwarders at their facilities, in lieu of the freight forwarder provided service. The $1.00 per 100 pounds reduction is accomplished through the application of conversion table (Column D of Note 1) or by applying the reduction directly to existing rates which provide for a forwarder pickup. The $1.00 per 100 pound reduction in rates which provide for a forwarder pickup is applied uniformly to all shipments tendered, regardless as to the location of terminals or the size of shipments.

TNT Tariff Agents, Inc., Agent, hereinafter called respondent or TNT, states that in compilling Tariff I.C.C.-F.F. No. 15 the tariff compilers simply reproduced matters already effective in ABC Freight Forwarding Tariff I.C.C.-F.F. No. 77 and in Midland Forwarding Corporation Tariff I.C.C.-F.F. No. 35. Since these two forwarders are also participants in respondents I.C.C.-F.F. No. 15, it was merely an oversight that the matter here at issue was not symbolized as new matter for the account of National Carloading Corporation. ABC and Midland had initially published similar rules providing for a $1.00 per 100 pound rate reduction, in individual tariffs effective July 31, 1972.

Respondent, in addition to publishing the rules under investigation, under Item 660 publishes a rule for "Allowance In Lieu Of Pickup And Delivery At Terminal Points". It

provides for a cartage allowance of 10 cents per 100 pounds to apply at all points in lieu of a forwarder pickup service, except at Milwaukee, Wis. where the allowance is 20 cents per 100 pounds and at Louisville, Ky. where it is 15 cents per 100 pounds, subject to a maximum allowance of $7.50. Rule 670 of the TNT tariff further provides that the allowance in lieu of pickup service as provided in Item 660 will be payable only to a consignor upon presentation of an itemized written statement, submitted within a specified time limit.

Respondent characterizes the reduced rates that result from the application of Item 52,000 to its published scale of rates which provide for a forwarder pickup, as its "dock rates". Because it also terms as "dock rates" the rates applicable from the forwarders' terminals or receiving stations, which as published never provided for a forwarder pickup service, the rates resulting from the application of Item 52,000 will be referred to henceforth as reduced service rates.

Respondent distinguishes its Item 52,000 "Shipments Delivered To Forwarder" from its allowance in lieu of pickup, in that the latter is only made available to shippers located within a terminal area or commercial zone and requires that the shippers submit statements periodically to claim the allowance, while the application of Item 52,000 require none of the foregoing and the resulting reduced rates are made available to whoever pays the freight bills.

Respondent by inference equates the reduced service rates with dock rates. It asserts forwarders have historically published dock rates and that under some of the dock rates it presently publishes, when compared with rates that provide for a forwarder furnished pickup, the difference exceeds $1.00 to 100 pounds. To establish this point it compares commodity dock rates to class rates what provide for a forwarder pickup, In some examples, the class rate that provides for a forwarder pickup, exceeds the commodity dock rate by more than $1.00 per 100 pounds.

Respondent states that freight forwarder pickup costs, not only within terminal areas but outside of same, have been skyrocketing and asks the Commission to review the Freight Forwarders initial statement filed in connection with Ex Parte No. 296, Procedures For Partial Recoupment of Increased Carrier Labor Costs. This statement was filed on October 3, 1973, on behalf of respondent freight forwarders parties to that proceeding including National Carloading Corporation. Exhibits 7 and 8 in that proceeding detail freight forwarder pickup costs based on both Section 409 contracts and local cartage contracts. Total less-than-carload tonnage handled by the three participating forwarders involved in the instant proceeding for the first 11 months of 1973 was 301,100,846 pounds. Expenditures for cartage and interline for this same period totalled $9,473,067. This average out to a cost per 100 pounds of $3.15. One half of this amount, or $1.57, would represent the average cost of forwarder pick-up.

It additionally submits that shipments delivered to the forwarder facilities by shippers are received throughout the day which make the shipments immediately available for further movement, whereas shipments picked up by the forwarders usually arrive at their terminals at the close of the business day and must await the next day for movement. It further states with forwarder provided pickups, shipments have to be physically checked at the shippers' platforms and again at the forwarders' facilities, whereas shipper delivered shipments only need be checked at the forwarders' facilities.

TNT asserts that the provisions under investigation have in no way affected the traffic of motor carriers or their profit-making capability.

Letters from 60 shippers supporting TNT and its continued maintenance of Item 52,000 were attached to respondent's opening statement. The letters offered no information as to the shippers' cost for delivering shipments to the forwarders' facilities.

RMB's position is (1) that the involved tariff provision is unjust and unreasonable, violates the provisions of Section 415 of the Act and should be ordered cancelled, and, (2) that if the assailed provision is allowed to remain in effect it would be disruptive of motor carrier's rate structures and the rate structures of other freight forwarders.

Since the respondent relied strictly upon revenue figures and failed to produce essential cost data to support the proposed allowance protestant used the latest available cost information released by this Commission regarding the Transcontinental Territory, as shown in Statement 2 C1-71. Page 183 of this publication shows that the average cost for pick-up and delivery service for a typical 5,000 pound shipment moving between New York and Los Angles, Calif., is 66.6 cents per 100 pounds. Since, in this proceeding we are only concerned with the cost of delivery to the forwarder facility which amount to 1/2 of the total pick-up and delivery service or 33.3 cents per 100 pounds. The proposed allowance of $1.00 per 100 pounds for delivery of a 5,000 pound shipment to the forwarders facility would provide the shipper or consignee a rebate or windfall discount on a variable cost level basis of $.667 per 100 pounds.

Protestant also believes that respondent's calling the proposed rates "dock rates" is a distinction without merit and that the tariff provisions are, in fact, allowances which are subject to the provisions of Section 415 of the Act.

In answer to respondents argument that its proposed rate structure was not designed to accomplish diversion from competing regulated modes of transportation, protestant quotes from one of the shipper witnesses supporting respondent. The witness from Dresser Hand Tool Division, Inc., stated: "We did not want to divert from common carriers but in order to remain competitive we have been forced into these drastic measurers. At this point we have diverted 350,000 pounds per

month." In its reply statement respondent states that even though the proposed rate structure is open to everyone the bulk of tonnage to be diverted will be from unregulated pool car distributors.

DISCUSSION AND CONCLUSIONS

It is immaterial whether the assailed provisions in both proceedings are considered as creating allowances or rate reductions because as either they have not been shown to be justified.

An allowance of any type can be no more than is just and reasonable. If it is more than just and reasonable, it constitutes a device for refunding, or remitting a portion of a freight forwarder's rates or charges, which rebating is outlawed by section 404(c) of Part IV of the Interstate Commerce Act. To be just and reasonable, an allowance resulting from delivery of a shipment by a party to a forwarder's facility, in lieu of using the available pickup service of the forwarder, must be commensurate with the facilities furnished and the service performed. It should not exceed the cost to the forwarder or the shipper for providing the service. See: Freight Forwarder Allowances At Baltimore, Md., 315 I.C.C. 719, 721.

In addition before the Commission can approve an allowance to shippers for carrier service it must know what the shippers' costs are for the services where performed by or for the shippers. In the absence of such a showing the evidence is inadequate to support a finding that the proposed allowance is not more than just and reasonable. Freight Forwarder Allowances At Baltimore, Md., supra.

[illegible] if the Commission should accept respondents largely unsupported statement that forwarder pick up costs are skyrocketing and respondents $1.57 per 100 pound forwarder pick-up costs from Ex Parte No. 296, supra, respondent did not attempt to show the pick-up costs when the shippers provide such services themselves.

In this Judges opinion protestant made out a prima facie case that granting $1.00 per 100 pounds for delivery of shipments to a forwarder's facilities in lieu of a forwarder provided service, pursuant to Item 52,000 of the TNT tariff is unjust and unreasonable.

Unjust and reasonable rates and practices can result, contrary to the National Transportation Policy, in unfair and disruptive competitive practices, not only among carriers within the same mode of transportation, but with carriers in other modes as well.

No. 35921 (Sub-No. 1)

FINDINGS

Upon consideration of all evidence of record, the Administrative Law Judge finds that the assailed schedules have not been shown to be just and reasonable and should be ordered cancelled.

The Judge further finds that this decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

It is the ORDER of the Administrative Law Judge that the assailed Item be cancelled and the proceeding discontinued.

Dated at Washington, D. C., this 29th day of May, 1974.

By the Commission, Albert E. Luttrell, Administrative Law Judge.

ROBERT L. OSWALD

(SEAL)

Secretary

EXCEPTIONS BY TNT TARIFF AGENTS TO INITIAL DECISION OF THE ADMINISTRATIVE JUDGE

Before The

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 35921 (Sub No. 1)

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

RESPONDENT'S EXCEPTIONS

TO THE INITIAL DECISION OF THE

ADMINISTRATIVE LAW JUDGE

Dated: July 17, 1974

Due: July 22, 1974

Respondent:

TNT Tariff Agents, Inc., Agent
201 Eleventh Avenue
New York, New York 10001

By:
F. H. Zentner
Vice President

The matter at issue herein will not affect the quality of the human environment.

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

RESPONDENT'S EXCEPTIONS
TO THE INITIAL DECISION OF THE
ADMINISTRATIVE LAW JUDGE

Comes now TNT Tariff Agents, Inc., Agent, hereinafter also referred to as TNT, respondent in the above-styled proceeding, and respectfully submits its exceptions to the initial decision of Administrative Law Judge Albert E. Luttrell served June 20, 1974. (References hereinafter to pages will be to pages of the Initial Decision except as otherwise specified).

(1) The Judge erred in concluding that, "It is immaterial whether the assailed provisions in both proceedings are considered as creating allowances or rate reductions because as either they have not been shown to be justified." (Page 5)

The judge totally overlooks the fact that allowances in lieu of pick up are paid only to shippers and this fact has not been refuted by any party here involved. The lower dock rates would benefit either shipper or consignee and the oversight on the part of the Judge precludes a just decision in this proceeding.

Respondent has made a detailed study of traffic handled during 1974 to demonstrate the necessity for the Commission to weigh the specific facts of this case and not relate the dock rates here involved to previous cases dealing with allowances. From January, 1974, thru May, 1974, respondent handled a total of 242,640 shipments and our study showed that only 83,679 were prepaid whereas 158,961 were handled on a collect basis. Therefore, 65.51% of all shipments handled in respondents system move on a collect basis and the dock rates here involved would benefit consignees rather than shippers.

It is, therefore, inconceivable to respondent that the Judge would cite as his reason for issuing an unfavorable decision on behalf of respondent's tariff matter that respondent has failed to show any shippers' costs. Certainly no carrier or individual could furnish cost of every shipper in these United States. No regulated carrier should be saddled with such an impossible burden which has no relevancy in this proceeding to begin with. We shall deal at greater length in Exception No. 2 with this concept of shippers' costs in relation to dock rates.

The instant proceeding is not an investigation and suspension docket. It is an investigation proceeding involving tariff matter which has been effective for some time. Therefore, the burden of proof is not upon respondent to prove that the proposed dock rates are justified. Rather it is upon the protestant to prove that they are unjust and unreasonable. If shippers' costs are to be the criteria as to whether or not dock rates are just and reasonable it is respectfully submitted that it is, therefore, incumbent upon protestants to introduce such evidence.

Respondent showed that its average pick-up costs on LTL traffic is $1.57 per 100 pounds. The Judge has summarized the cost and tonnage figures which respondent submitted quite accurately at page 3. These figures were taken from respondent's financial records and were sworn to by Witness F. H. Zentner. They are available to be checked by any auditor the Commission may care to have do so at any time. Yet at page 5, the Judge categorizes the $1.57 figure as "largely unsupported". On the other hand, all protestant had to do was submit motor carrier costs for picking up a 5,000 pound shipment which, at best, is a dubious undertaking in a freight forwarder rate proceeding and the Judge finds that it made out a prima facie case. One can only shake one's head in awe at such mind-boggling logic.

(2) The Judge erred in allowing the decision in Freight Forwarders Allowance At Baltimore, Md., 315 I.C.C. 719, 721, to influence his opinion in this proceeding. (Page 5)

In paragraphs 3 and 4 of his "Discussion and Conclusions", the Judge keeps referring to "allowances", and cites Freight Forwarder Allowances At Baltimore, Md., 315 I.C.C. 719, 721 as his authority. This proves that the Judge, despite his statement at page 3 that the rates here at issue "will be referred to henceforth as reduced service rates", has the thought firmly fixed in his mind that this proceeding involves "allowances". Hence, in paragraphs 3, 4 and 5 he keeps reiterating that "allowances" may not exceed the cost to the shipper for providing pick-up service and maintains that respondent has failed to show such costs.

Does the Judge, and for that matter the Commission, really believe that it is possible to show the costs for all shippers who may use these rates. It would be an impossible task for any carrier to attempt such an undertaking. The cost in time, money and personnel in gathering such data would be monumental How can the Judge, let alone the Commission, impose such an impossible yardstick. For the sake of argument, assuming for the moment that it would be possible to obtain cost information from all shippers, what if the majority of shippers' costs were found to be equal to or greater than $1.00 per cwt. Would the Commission then hold that because a few shippers had costs less than $1.00 per cwt., all shippers should be deprived of these dock rates. Or would the Commission just have respondent, by tariff provision, exclude those shippers whose costs were less than $1.00. One could follow this line of reasoning to any number of absurd conclusions, all of which would only serve to illustrate how utterly ridiculous this require ment for showing shippers' costs is.

It is submitted that based on the evidence of record in this proceeding, respondent has established a prima facie case that the dock rates at issue are

just and reasonable. For the Judge (and the Commission) to find that this is not so, based on a yardstick with which it is impossible to comply, would force respondent to seek a higher tribunal for an ultimate decision. A court of law follows rules of evidence and does not establish arbitrary and unreasonable requirements in the presentation of such evidence.

(3) The Judge erred in concluding that protestant made out a prima facie case that the assailed dock rates are unjust and unreasonable. (Page 5)

In arriving at his conclusion the Judge apparently relied heavily upon protestant's use of motor carrier cost figures. This is like comparing apples with oranges. There is no similarity between motor carrier costs and freight forwarder costs. Freight forwarders may use their own pick up equipment only within prescribed Commercial Zones and must contract with Part II carriers for pick up service outside such Commercial Zones. Motor carriers are not so bound. Congress had this and other differences between motor carriers and freight forwarders in mind when it enacted Section 406 (d) which reads in part as follows:

> "In the exercise of its power to prescribe just and reasonable rates and charges of freight forwarders, and classifications, regulations, and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent nature of freight forwarding....." (Emphasis supplied).

Additionally, Congress, again recognizing the difference between the various modes of transportation, enacted Section 15a (3):

> "In a proceeding involving competition between carriers of different modes of transportation subject to this Act, the Commission, in determining whether a rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable. Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this Act." (Emphasis supplied).

By relying on motor carrier costs in concluding that protestant made out a prima facie case that the assailed dock rates are unjust and unreasonable, the Judge has apparently chosen to ignore the above-quoted sections of the Act.

It is noteworthy that protestant saw fit to only present motor carrier costs in connection with 5,000 pound shipments. Is this because their costs exceed $1.00 per cwt. on the lower weight categories. More noteworthy is the Judge's acceptance of this evidence in calling for the wholesale cancellation of the assailed rates for the lower weight categories. An unbiased observor would certainly have to conclude that, even if motor carrier costs were valid in judging a freight forwarder rate proceeding, which respondent respectfully submits they are not, the absence of a showing of such costs for shipments under 5,000 pounds does not make a prima facie case for disallowing the assailed dock rates for this segment of traffic.

PRAYER

WHEREFORE, Respondent respectfully prays that the Commission take note of the exceptions outlined above and find the matter in Docket No. 35921 (Sub No. 1) not found to be unjust and unreasonable and permit it to remain in effect and that the Commission order the proceeding discontinued.

Respectfully submitted,

TNT TARIFF AGENTS, INC., AGENT

F. H. Zentner
Vice president

Due Date: July 22, 1974.

VERIFICATION

State of New York)
New York County) SS:

F. H. Zentner, being duly sworn, deposes and says that he has prepared the foregoing statement and knows the contents thereof and that the same are true as stated.

F. H. Zentner

Subscribed in my presence and sworn to before me the 17th day of July, 1974.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing first class, postage prepaid, a copy thereof properly addressed to each such party.

Dated at New York, N. Y. this 17th day of July, 1974.

F. H. Zentner

REPLY BY ROCKY MOUNTAIN MOTOR TARIFF BUREAU 322a

BEFORE THE

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 35921 (SUB NO. 1)

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

REPLY TO

RESPONDENT'S EXCEPTIONS TO THE INITIAL DECISION

OF THE ADMINISTRATIVE LAW JUDGE

EELB

AUG 2 1974

RECEIVED

Dated at:

4045 Pecos Street
P. O. Box 5746, T. A.
Denver, Colorado 80217
July 31, 1974

For Protestant:

Don R. Devine

Registered Practitioner

Due Date: August 12, 1974

BEFORE THE

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 35921 (SUB NO. 1)

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

REPLY TO

RESPONDENT'S EXCEPTIONS TO THE INITIAL DECISION

OF THE ADMINISTRATIVE LAW JUDGE

Comes now the Rocky Mountain Motor Tariff Bureau, Inc. (RMB), protestant in the above proceeding, and submits its Reply to the Respondent's Exceptions to the Initial Decision of the Administrative Law Judge, served June 20, 1974, and respectfully says:

STATEMENT OF THE CASE

Under the date of November 27, 1973, RMB protested and requested suspension of Item 520-C in Supplement 41 to Freight Forwarders Tariff Bureau, Inc., Agent, Tariff 16-K, I.C.C.-F.F. 206. The assailed matter involved an allowance of one dollar ($1.00) per hundred pounds on LTL shipments that were transported to the forwarder at its facility without expense to the forwarder.

After due consideration of protestant's petition for suspension and the reply for and on behalf of the involved forwarders, the Suspension and Fourth Section Board, by its order dated October 24, 1973, concluded

to place the proposal under suspension to and including July 14, 1974, in I. & S. Docket No. 8894 (Sub No. 1), *Allowance for Delivery of Shipments to Forwarder Facilities*, and the Commisison, on its own motion, by order dated December 12, 1973, instituted an investigation into the existing provisions in paragraph (f), Item 52000, TNT Tariff Agents, Inc., Agent, Tariff No. 14, I.C.C.-F.F. No. 15, under Docket No. 35921 (Sub No. 1), *Allowance for Delivery of Shipments to Forwarder Facilities*.

By order served December 17, 1973, the matter, Docket No. 35921 (Sub No. 1), *supra*, was assigned for handling under modified procedure with respondent's opening statement due January 7, 1974, and protestant's statement due thirty days thereafter. After timely filing of this protestant's statement, and respondent's reply thereto, the Commission, by Administrative Law Judge Albert E. Luttrell, issued its Initial Decision under service date of June 20, 1974, finding the assailed allowance resulting in rate reduction, for delivery of shipments to freight forwarders facilities, in lieu of forwarder provided pickup, not shown to be just and reasonable.

Protestant acknowledges receipt of respondent's timely filed exceptions, and submits herewith its reply.

ARGUMENT

I

TNT initially takes exception to the Administrative Law Judge's conclusion that whether the assailed provisions are considered as creating allowances or rate reductions, they have not been shown to be justified. Respondent then once again makes its bifurcated semantical attempt to distinquish between an allowance in lieu of pickup and "lower dock rates". It states that a majority of its shipments move collect, thus the involved "dock rates" would benefit consignees more than shippers. Respondent states that "no carrier or individual could furnish cost of every shipper in these United States" and notes that its costs for pickup service on LTL traffic is $1.57 per 100 pounds.

It is clear from reading respondent's initial exception that it still fails to understand the simple issue involved in this proceeding. Respondent's "dock rates" (a $1.00 per 100 pound reduction from the otherwise applicable rate) apply when and only when no pickup service on LTL shipments is performed by the Forwarder and such shipments are delivered directly to the forwarder's facility. Thus, regardless of who benefits from the lower rate (which we submit is an allowance), the amount of reduction, and for that matter, the resulting rate, must be shown to be just and reasonable under the Interstate Commerce Act. In effect, this means that the cost to the party providing the delivery to the freight forwarder cannot be less than the amount the forwarder allows for such service. Otherwise, an unlawful rebate would occur in violation of Section 405(c) of the Interstate Commerce Act. While the respondent cannot seem to grasp this, the Administrative Law Judge is explicit. At page 5 he stated:

> An allowance of any type can be no more than is just and reasonable. If it is more than just and reasonable, it constitutes a device for refunding, or remitting a portion of a freight forwarder's rates or charges, which rebating is outlawed by section 404(c) (sic) of Part IV of the Interstate Commerce Act. To be just and reasonable, an allowance resulting from delivery of a shipment by a party to a forwarder's facility, in lieu of using the available pickup service of the forwarder, must be commensurate with the facilities furnished and the service performed. It should not exceed the cost to the forwarder or the shipper for providing the service. See: *Freight Forwarder Allowances at Baltimore, Md.*, 315 I.C.C. 719, 721. (Emphasis supplied)

Respondent's only cost "evidence" in this entire proceeding was a reference to its own pickup costs as shown in an Exhibit in Ex Parte 296, *Procedures for Partial Recoupment of Increased Labor Costs*. We question the decision of the Administrative Law Judge in adopting such evidence as respondent's use of such referential material violates Rules 80 and 81 of the Commission's General Rules of Practice. More importantly, however, is the fact that such evidence standing alone is meaningless in proving the assailed rates to be just and reasonable. No evidence of shipper costs was submitted. No evidence of the compensatory nature of the resulting rates was furnished. Respondent's initial exception is without merit.

II

Respondent's second exception alleges that the Administrative Law Judge erred in allowing the decision in *Freight Forwarders Allowance at Baltimore, Md.*, 315 I.C.C. 719, to influence his opinion in this proceeding. Apparently, respondent has failed to read the case. It involved a schedule filed by ABC Freight Forwarding Corporation which proposed a reduction of 35 cents in its rates on shipments delivered to

its receiving stations at Baltimore, Md., and a schedule filed by Lifschultz Fast Freight proposing to establish reductions in its class rates, applicable when the shippers performed the pickup service. In effect, the rates proposed were "dock rates" and the amount of the reductions were considered as allowances. The Rates and Practices Review Board found the following at page 721:

> Whether the proposals are regarded as reduced rates or as increased allowances to shippers, they have not been justified. In order to establish the reasonableness of proposed reduced rates it is incumbent upon the respondents to show that they would be compensatory for the service to be performed thereunder. The record is devoid of any evidence bearing on the compensatory character of the reduced rates.

In the instant proceeding, the Judge, in view of the fact that the allowances in question are arrived at by reducing the rates by a certain amount, properly referred to the cited decision.

In its second exception, respondent also attacks the Commission's long standing requirement that evidence of cost to shippers be submitted to show that an allowance is just and reasonable. At page 3 respondent states:

> Does the Judge, and for that matter the Commission, really believe that it is possible to show the costs for all shippers who may use these rates. It would be an impossible task for any carrier to attempt such an undertaking!

Obviously, the respondent, for reasons known only to it, has failed to even peruse a number of Commission decisions in which allowances have been authorized. More importantly, the standard of proof that the respondent alludes to simply does not exist. Certainly no such standard is found in the case excepted to by the respondent. It is submitted that the assailed case is directly on point and was properly utilized by the Administrative Law Judge in rendering his decision.

III

Finally, respondent asserts that it was error for the Administrative Law Judge to conclude that this protestant had made a *prima facie* case that the assailed rates were unjust and unreasonable. This protestant submitted cost data and other pertinent evidence to show that the assailed provisions were unjust and unreasonable. Respondent offered nothing in rebuttal. Thus it failed to meet its burden of proof.

Respondent assails the Judge's use of motor carrier costs in reaching his decision, stating that it is like comparing apples with oranges. Such a contention is without merit. Pickup service generally involves a truck, a driver, and similarly traversed highways, for forwarders and motor carriers. The "inherent nature" of the forwarder mode does not preclude costs for a segment of service from being similar. Perhaps this protestant could have developed even more meaningful cost data in a suspension proceeding involving these rates, where detailed cost data of the compensatory nature of the proposed rates would have been required from respondent. However, it never had an opportunity to do so because the rates were originally published without proper symbolization due to an "oversight" on the part of TNT, and became effective without protest. In any event, this protestant submitted sufficient evidence to show the Commission that it would be unjust and unreasonable to allow the assailed provisions to remain in effect, thus establishing a *prima facie* case, which respondent failed to rebut.

Wherefore, in view of all the foregoing, protestant respectfully prays that the Commission will affirm the findings of the Administrative Law Judge and adopt them as their own.

Respectfully submitted,

Don R. Devine

Registered Practitioner

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on Mr. F. H. Zentner, Vice President, TNT Tariff Agents, Inc., Agent, 201 Eleventh Avenue, New York, New York, 10001, by sending him a copy thereof by air mail, postage prepaid, and properly addressed.

Dated at Denver, Colorado, this 31st day of July, 1974.

Don R. Devine

DECISION AND ORDER OF INTERSTATE COMMERCE COMMISSION
DATED DECEMBER 3, 1974

SERVICE DATE

DEC 5 1974

DECISION AND ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Review Board Number 4, held at its office in Washington, D. C., on the 3rd day of December, 1974.

No. 35921 (Sub-No. 1)

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

Upon consideration of the record in the above-captioned proceeding, including: the initial decision of the Administrative Law Judge, the exceptions thereto filed by the respondents, and the reply to exceptions filed by the protestant; and,

It appearing, That the Administrative Law Judge found that the protestant made out a prima facie showing that the tariff item under investigation is unjust and unreasonable and should be ordered cancelled;

And it further appearing, That the exceptions do not show any material errors in the Administrative Law Judge's statement and evaluation of the facts, his conclusions of law, or findings; do not raise any material matters of fact or law not adequately considered and properly disposed of by the Administrative Law Judge in his decision; and are not of such nature as to require the issuance of a report by Review Board Number 4 discussing the evidence and the arguments advanced by the parties in light of the exceptions;

Wherefore, and good cause appearing therefor:

We find, That the evidence considered in the light of the exceptions and the reply thereto does not warrant a result different from that reached by the Administrative Law Judge, and that subject to the modification noted below, his statement of facts, conclusions, and findings, being proper and correct in all material respects should be, and they are hereby, affirmed and adopted as our own.

It is ordered, That in adopting the initial decision as our own, the following change is hereby made: on sheet 2 delete "Shipments Delivered to Forwarder," and the indented paragraph immediately following and substitute in lieu thereof the following:

"(f) In the event no pick-up service on LTL shipments is performed by the Forwarder and such shipments are delivered directly to forwarder's facility in accordance with the provisions of Item 53550 the rates applicable to such shipments in tariffs making reference to this tariff will be subject to Column D of Note 1 herein or in the absence of specific provisions or Column D, the rates will

apply less one dollar per hundred pounds. Where rates are provided which do not include pick-up service, such rates will not apply and in lieu thereof, the rates that do include pick-up service, less one dollar per hundred pounds will apply."

It is further ordered, That the respondents herein be, and they are hereby, notified and required to cancel the schedules described in the order entered on December 12, 1973, by the Commission's Suspension and Fourth Section Board, on or before 35 days from the service date of this decision and order, upon not less than one day's notice to this Commission and to the general public by filing and posting in the manner prescribed by the Commission under section 405 of the Interstate Commerce Act, and that this proceeding be, and it is hereby, discontinued.

By the Commission, Review Board Number 4, Members FitzPatrick, Shaw, and Fisher.

ROBERT L. OSWALD,
Secretary

(SEAL)

PETITION BY TNT TARIFF AGENT FOR RECONSIDERATION AND FURTHER HEARING

332a

BEFORE THE

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 35921 (Sub No. 1)

ALLOWANCE FOR DELIVERY OF
SHIPMENTS TO FORWARDER FACILITIES

PETITION OF RESPONDENT TNT TARIFF
AGENTS, INC. FOR RECONSIDERATION
AND FOR FURTHER HEARING

Respondent:

TNT Tariff Agents, Inc., Agent
201 Eleventh Avenue
New York, New York 10001

By:
F. H. Zentner, Vice President

Dated: January 2, 1975

Due: January 6, 1975

BEFORE THE

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 35921 (Sub No. 1)

ALLOWANCE FOR DELIVERY OF
SHIPMENTS TO FORWARDER FACILITIES

PETITION OF RESPONDENT TNT TARIFF
AGENTS, INC. FOR RECONSIDERATION
AND FOR FURTHER HEARING

Comes not TNT Tariff Agents, Inc. (TNT) respondent herein and submits this Petition for Reconsideration and for Further Hearing.

I.

INTRODUCTION

This Petition for Reconsideration and for Further Hearing is submitted from the Decision and Order of the Commission Review Board No. 4 served December 5, 1974, which affirmed and adopted the initial decision of the Administrative Law Judge served June 20, 1974. The order of Review Board No. 4 overruled the exceptions of the respondent TNT. The Review Board found that the schedules under investigation were shown to be unjust and unreasonable and it ordered the assailed schedules to be cancelled on or before 35 days from the service date of the Review Board's order.

The investigation in the proceeding is ancillary to the investigation in I & S Docket No. 8894 (Sub No. 1). The assailed schedules were legally published and became effective on September 10, 1973. The assailed schedules

reflected similar matter previously published in ABC Freight Forwarding Corporation (ABC) Tariff 9-E I.C.C.-F.F. 77 Item 619A effective July 31, 1972 and Midland Forwarding Corporation (Midland) Item 619A Supplement 122 to its tariff I.C.C.-F.F. 35 also effective July 31, 1972.

While the lawfulness of the assailed schedules has been put into issue by the order of the Commission, it is clear that due process of law requires that the burden of proving the schedules to be unlawful is upon the Commission and the protestant Rocky Mountain Motor Tariff Bureau, Inc., to establish a prima facie case. It is also axiomatic that the respondent herein TNT had no duty to go forward with any evidence unitl a prima facie case had been established.

Since the matter at issue herein is identical in nature to the schedules covered by the original order in this proceeding, Docket No. 35921, Allowance For Delivery of Shipments to Forwarder Facilities, and since our reasons for petitioning for reconsideration and for further hearing are the same as those expressed in our Petition For Reconsideration And For Further Hearing therein, (only the protestant being different), we attach hereto as our Exhibit No. 1 a copy of that petition. This includes as well the verified statement of Mr. Craig F. Rockey with respect to costs.

II.

ALL THE POINTS RAISED IN
EXHIBIT NO. 1 ARE PERTINENT
TO THE MATTERS HERE AT ISSUE.

Exhibit No. 1 in all respects is pertinent to the issues in this proceeding and should be construed as requesting relief in this proceeding as well. One further aspect to consider in connection with motor carrier cost evidence presented by protestants is that they only submitted such evidence in connection with 5,000 pound shipments. This can hardly be accepted as a basis for concluding that protestants made out a prima facie case for all weight categories here involved.

III.

CONCLUSION

In view of the foregoing, it is submitted that upon reconsideration the Commission should find that protestant has not borne the burden of establishing a prima facie case and that the investigation be discontinued. It is also requested that the proceeding be reopened to receive Mr. Craig Rockey's statement which is part of Exhibit No. 1.

Respectfully submitted,
TNT TARIFF AGENTS, INC., AGENT

F. H. Zentner,
Vice President

CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of January, 1975 served a copy of this Petition of Respondent TNT Tariff Agents, Inc., upon parties of record via first class mail postage prepaid.

F. H. Zentner

336a

BEFORE THE

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 35921

ALLOWANCE FOR DELIVERY OF SHIPMENTS TO FORWARDER FACILITIES

PETITION OF RESPONDENT TNT TARIFF AGENTS, INC. FOR RECONSIDERATION AND FOR FURTHER HEARING

H. Neil Garson

Attorney for Respondent
TNT Tariff Agents, Inc.

OF COUNSEL:

Garson, de Member & Weiner
Court Square West Building
1400 North Uhle Street
Arlington, Virginia 22201

Dated: October 21, 1974

337a

BEFORE THE

INTERSTATE COMMERCE COMMISSION

DOCKET NO. 35921

ALLOWANCE FOR DELIVERY OF
SHIPMENTS TO FORWARDER FACILITIES

PETITION OF RESPONDENT TNT TARIFF
AGENTS, INC. FOR RECONSIDERATION
AND FOR FURTHER HEARING

Comes now TNT Tariff Agents, Inc. (TNT) 1/ respondent herein and by its attorney submits this Petition for Reconsideration and for Further Hearing.

I.

INTRODUCTION

This Petition for Reconsideration and for Further Hearing

1/ The Following are now participants in the agency tariff: National Carloading Corp.; Central States Forwarding Corp.; Master Forwarding Corp.

is submitted from the Decision and Order of the Commission Review Board No. 4 served July 23, 1974 [2/] which affirmed and adopted the initial decision of the Administrative Law Judge served March 22, 1974. The order of Review Board No. 4 overruled the exceptions of the respondent TNT. The Review Board found that the schedules under investigation were shown to be unjust and unreasonable and it ordered the assailed schedules to be cancelled on or before 35 days from the service date of the Review Board's order. [3/]

The investigation in this proceeding is ancillary to the investigation in I & S Docket No. 8894. However, the assailed schedules were legally published and became effective on September 10, 1973. The assailed schedules reflected similar matter previously published in ABC Freight Forwarding Corporation (ABC) Tariff 9-E ICC-FF 77 Item 619A effective July 31, 1972 and Midland Forwarding Corporation (Midland) Item 619A Supplement 122 to its tariff ICC-FF 35 also effective July 31, 1972.

2/ The time for filing petitions has been extended by the Commission to October 21, 1974.

3/ The requirement for cancellation has been postponed to and including October 31, 1974.

While the lawfulness of the assailed schedules have been put into issue by the order of the Commission, it is clear that due process of law requires that the burden of proving the schedules to be unlawful is upon the Commission and the protestant The Eastern Central Motor Carriers Association, Inc., to establish a prima facie case. It is also axiomatic that the respondent herein TNT had no duty to go forward with any evidence until a prima facie case had been established. As will be shown below, neither the Commission nor the protestant established a prima facie case.

II.

BURDEN OF PROOF IS ON THE COMMISSION AND THE PROTESTANT TO ESTABLISHED A PRIMA FACIE CASE THAT ASSAILED LEGALLY ESTABLISHED SCHEDULES OF RATES ARE UNLAWFUL.

As indicated above the instant proceeding was initiated by the Commission as an ancillary proceeding to the investigation in I & S Docket No. 8894. The assailed schedules found in TNT's tariff ICC-FF 15, which became effective September 10, 1973, merely reflected similar matter previously found in ABC Freight Forwarding Corporation (ABC), Tariff 9-E ICC-FF 77

Item 619A effective July 31, 1972 and Midland Forwarding Corporation (Midland) Item 619A Supplement 122 to its tariff ICC-FF 35 effective July 31, 1972. Both ABC and Midland participated in TNT agency tariff. Essentially the investigation initiated in Docket No. 35921 concerns schedules containing rates which had been legally in effect well over a year before the initiation of the investigation by the Commission.

Since the assailed schedules had been in effect prior to the issuance of the order of investigation, it is clear that the burden of proof was not on the respondent, TNT. Import Volume Forwarder Rates, Pacific Coast to East 310 ICC 399, 400. See also Rice from Arkansas to Illinois and Missouri 306 ICC 111 where the Commission, Division 2 held at p. 114: "There is no burden on the respondents in this proceeding to establish that their rates are just and reasonable nor would the evidence of record support a finding that they are unlawful." (Underscoring supplied.) See also Class Rates From Chicago, Illinois to Texas 308 ICC 467, 468; and Forwarder Class Rates, Official and W. T. L. Territory 310 ICC 785, 790.

The mere fact that the instant proceeding is ancillary to an I & S proceeding does not alter or modify the principle of law that the burden of proof remains on those seeking to

hold legally established rates unlawful. Thus, in Lead and Zinc From Chicago, Illinois to Detroit, Michigan 3[illegible] ICC 103, the Commission in an analogous procedural situation held at p. 104:

> "The rate here considered was in effect prior to the time this investigation was initiated, and thus no burden of proof rest upon the respondent."

Moreover, had the respondent stood mute, this could not shift the burden of proof, nor could the failure to adduce evidence be used against the respondent. Thus, the Commission in Lead and Zinc supra further held (p. 104):

> "It follows that no inference of unlawfulness can be drawn from the fact that the respondent chose not to introduce any evidence."

The Administrative Procedure Act Title 5 USCA §556 (d) provides that "Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof." This has been given full judicial weight by the courts repeatedly citing the statute, as in Stewart v. Penny (D. C. -Nev.) 238 F. Supp. 821. The courts have insisted upon the fullest

implementation of the statutory requirement even where the proponent of the rule or order is an administrative agency rather than a private individual as in Kirby v. Shaw C.A. Calif. 1966, 358 F.2d 446, where the court held that the burden rested upon the Post Office Department as the proponent of a supplemental fraud order to at least establish that two products offered for sale by the appealing party, the first of which had been banned from the mails by the initial fraud order, were essentially the same and were offered for sale by the appealing party on essentially the same representations.

To the same effect is the holding in Concrete Materials v. FTC, C.A. 7, 1951, 189 F.2d 359, where the court held that in a hearing to determine whether the company should cease and desist making certain representations, the burden was on the Federal Trade Commission to prove its charges by competent, relevant and substantial evidence.

The foregoing clearly shows that due process of law requires that the burden of proof to establish a prima facie case is at all times upon the proponent of the rule -- i.e., in this case the Commission and the protestant. This

principle of law endures even though the respondent submits no evidence or some evidence. It follows that, unless the Commission and the protestant establish a prima facie case in the first phase by submitting valid and substantiated evidence, the Commission cannot rule against the respondent merely because the respondent failed to submit adequate evidence to support its position. Any other conclusion would relieve the Commission and the protestant of the burden of proof, and it would make a mockery out of due process of law.

In the instant proceeding, the Commission did not submit any evidence in support of its allegation of unlawfulness. Instead the Commission and the Judge relied upon evidence so general in nature that it hardly can be called substantial and pertinent evidence sufficient to establish a prima facie case. A reading of the Judge's initial decision which was adopted by the Review Board clearly demonstrates that the Judge seized upon the evidence submitted by respondent and used this as the basis for his finding that the assailed schedules were unjust and unreasonable. It is submitted that this constitutes reversible error and that on reconsideration

the Commission should so hold.

III.

THE EVIDENCE SUBMITTED BY PROTESTANT IS OF NO PROBATIVE VALUE AND THEREFORE INSUFFICIENT TO ESTABLISH A PRIMA FACIE CASE.

A review of the Statement of Facts and Argument submitted by protestant will clearly show that the alleged facts involve motor carrier bureau costs which are completely understated and which are not applicable to the respondent's freight forwarder operations. For example, the costs shown in Exhibit No. PRH1 simply fail to include the proper cost categories associated with the pickup functions involved. See verified statement of Mr. Craig Rockey attached herewith for a proper representation of the functions and costs thereof. On this basis alone, the Judge should have found that protestant had failed to meet its burden, and that the investigation should be discontinued.

Protestant admitted at p. 14 of its submission that:

"Protestant does not deny the fact that the publication of rates applicable [from] the terminals or receiving stations